



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Decision Codes: MNDCT, LRE, OLC

### **Introduction**

The Application for Dispute Resolution filed by the Tenant makes the following claims:

- a. A monetary order in the sum of \$9200
- b. A monetary order in the sum of \$800 for the reduced value of the tenancy
- c. An order that the landlord comply with the Act, Regulations and/or tenancy agreement.
- d. An order suspending or setting conditions on the landlord's right to enter the rental unit.

The Landlord failed to appear at the scheduled start of the hearing which was 9:30 a.m. on November 4, 2019. The Tenant was present and ready to proceed. I left the teleconference hearing connection open and did not start the hearing until 10 minutes after the schedule start time in order to enable the landlord to call in. The landlord failed to appear. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I then proceeded with the hearing. The tenant was given a full opportunity to present affirmed testimony, to make submissions and to call witnesses.

On the basis of the solemnly affirmed evidence presented at the hearing a decision has been reached. All of the evidence was carefully considered.

The landlord was not present at the hearing although they uploaded a large amount of documentary evidence 3 days before the hearing.

### **"3.15 Respondent's evidence provided in single package**

Where possible, copies of all of the respondent's available evidence should be submitted to the Residential Tenancy Branch online through the Dispute Access Site or directly to the Residential Tenancy Branch Office or through a Service BC Office. The respondent's evidence should be served on the other party in a single complete package.

The respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy

Branch as soon as possible. Except for evidence related to an expedited hearing (see Rule 10), and subject to Rule 3.17, **the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.**" (my emphasis)

I determined that it was not appropriate to consider the landlord's uploaded materials for the following reasons:

- a. The landlord failed to comply with the Rules of Procedure for providing documentary evidence in a timely way.
- b. The material provided is not under solemn affirmation.
- c. The tenant testified he was not able to fully consider the landlord's materials because of the late delivery of the documents. He further stated that one of his children was rushed to Children's Hospital and he is presently with that child.

#### Issues to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to a monetary order and if so how much?
- b. Whether the tenant is entitled to a monetary order for the reduced value of the tenancy and if so how much?
- c. Whether the tenant is entitled to an order suspending or setting conditions on the landlord's right to enter the rental unit.
- d. Whether the tenant is entitled to an order that the landlord comply with the Act, Regulations and/or tenancy agreement.

#### Background and Evidence:

The tenancy began on September 1, 2018. The tenancy agreement provided that the tenant(s) would pay rent of \$1200 per month payable on the first day of each month. The tenant(s) paid a security deposit of \$600 and a pet damage deposit of \$600 at the start of the tenancy.

The tenant gave the following evidence:

- The landlord started work on replacing a deck and the steps leading up to the deck on August 13, 2019. The deck and steps were in a dilapidated condition and were extremely unsafe. The work has not been completed.

- One of the original contractors to the job entered his rental unit when he was not present and helped himself to food and rummaged through his personal belongings.
- The landlord's contractors continued to do work without giving him property notice.
- The landlord has abandoned the work on the deck and he is unable to use it. It does not have railing and is blocked off. Some of the decking is missing.
- The landlord has failed to remove the old deck and steps.
- He was very upset with the way the landlord has dealt with him. He stated that he is not entitled to the \$9200 monetary claim but he believes he is entitled to \$800 for the reduced value of the tenancy.
- The tenant was given an opportunity of proceeding with the hearing at this time or having the matter dismissed with liberty to re-apply. He stated he wanted to proceed with the hearing at this time.

#### Law

Section 32 of the Residential Tenancy Act provides as follows:

Landlord and tenant obligations to repair and maintain

32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

#### Analysis:

I dismissed the Tenant claim for a monetary order of \$9200 as the tenant failed to present sufficient proof to establish claim and acknowledged that he was not entitled to it.

I determined the landlord failed to comply with section 32(1) of the Act and that the tenant is entitled to \$750 for the reduced value of the tenancy from August 13, 2019 to the date of this hearing. The landlord failed to provide the Notices required under the Act. The tenant has not been able to use the back deck and the steps leading up to the deck for approximately 3 months. The landlord failed to remove the old deck and this has limited the tenant from fully enjoying the yard.

Further, the tenant testified the landlord failed to provide proper notice and he sought an order denying the landlord access to the rental unit when he was not there. I determined the tenant failed to present sufficient evidence for an order denying the landlord access to the rental property unless the Tenant was present. However, I ordered that the landlord comply with section 29 of the Act which provides as follows:

29 (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
  - (i) the purpose for entering, which must be reasonable;
  - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
- (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
- (d) the landlord has an order of the director authorizing the entry;
- (e) the tenant has abandoned the rental unit;
- (f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

Monetary Order and Cost of Filing fee

**I ordered the landlord(s) to pay to the tenant the sum of \$750 such sum may be deducted from future rent. I further ordered that the landlord comply with section 29 of the Residential Tenancy Act which is set out above.**

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

**This decision is final and binding on the parties.**

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Residential Tenancy Act.

Dated: November 04, 2019

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Residential Tenancy Branch