



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MNDC, OLC, RP, PSF, FF

Introduction

This hearing dealt with the tenant's application for dispute resolution, seeking to cancel a notice to end tenancy issued by the landlord for the landlord's use of the property. The tenant also applied for an order directing the landlord to comply with the *Act*, provide services and carry out repairs. The tenant applied for a monetary order for compensation and for the recovery of the filing fee.

Both parties attended this hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenants represented themselves. The landlord was represented by legal counsel. As both parties were in attendance, I confirmed service of documents. The parties confirmed receipt of each other's evidence. I find that the parties were served with evidentiary materials in accordance with sections 88 and 89 of the *Act*.

At the start of the hearing the tenant informed me that she intended to move out by December 31, 2019 which is the effective date of the notice to end tenancy. An order of possession will be granted to the landlord effective this date. Since the tenancy is ending the tenant's application for an order directing the landlord to comply with the *Act*, provide services and carry out repairs is moot. The tenant stated that she wished to pursue her claim for a monetary order for compensation, utilities and for the recovery of the filing fee.

Issues to be Decided

Is the tenant entitled to compensation, utilities and the recovery of the filing fee?

Background and Evidence

The parties testified that the tenancy began on July 01, 2019. A copy of the tenancy agreement was filed into evidence. The rent is \$1,300.00 due on the first of each month and does not include utilities. The tenant is required to pay 50% of the utilities.

The rental unit consists of a two bedroom fully contained suite located on the lower floor of a two-level home. The upper level is rented out separately. The tenant testified that the upper level is occupied by two adults and a child while the lower level is occupied by two adults. The tenant decided that she should not be paying 50% of the utility bill and sometime in July 2019, she informed the landlord verbally. The representative of the landlord stated that this issue was never raised by the tenant and that the landlord found out when he received the notice of hearing package in October 2019. The tenant is claiming \$112.11 which consists of 10% of the utility bills paid by the tenant.

On October 03, 2019, the landlord served the tenant with a two month notice to end tenancy for landlord's use of property to be effective on December 31, 2019. The reason the landlord gave the notice to the tenant is described as, the rental unit will be occupied by the landlord or the landlord's spouse or a close family member of the landlord or the landlord's spouse. The tenant disputed the notice in a timely manner.

Both parties complained of problems interacting with each other and the tenant has made a claim of \$1,300.00 for "*moving to and from this address under false pretenses*"

The tenant has claimed the following:

1.	3 hours to file dispute – lost income	\$209.00
2.	Canada post	\$13.25
3.	Printing	\$130.32
4.	10% Utilities	\$112.11
5.	Moving to and from this address	\$1,300.00
6.	Filing fee	\$100.00
	Total	\$1,864.68

The tenant has also claimed compensation for repairs, neglect, harassment and renting out an illegal suite, but has failed to put a monetary value to her claim. Therefore, I am unable to address the portion of the tenant's application that addresses these issues.

Analysis

Since the tenant has decided to move out on December 31, 2019, I grant the landlord an order of possession effective this date. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

Regarding the tenant's monetary claim I find as follows:

1. 3 hours to file dispute – lost income \$209.00
2. Canada post - \$13.25
3. Printing - \$130.32

The legislation does not permit me to award any litigation related costs other than the filing fee. Accordingly the tenant's claim for items #1, #2 and #3 are dismissed.

4. 10% Utilities - \$112.11

The parties agreed that there are 3 occupants in the upper level and only 2 in the lower level. The tenant stated that when she signed the tenancy agreement and agreed to pay 50% of the utilities, she was not informed of the number of occupants in the upper level. The tenant testified that upon finding out, she informed the landlord verbally that she intended to pay only 40% of the utility bills.

Based on the testimony of both parties, I find that the upper level had more occupants than the lower level and therefore it is reasonable to expect that the split of utilities will be 60/40. Even though the landlord denied having been notified of the tenant's concern during the tenancy, I find that the tenant is entitled to her claim

5. Moving to and from this address - \$1,300.00

The tenancy started on July 01, 2019 and on October 03, 2019, the landlord served the tenant with a notice to end tenancy for landlord's use of property. The tenancy was just three months old when the landlord served the notice to end tenancy. Even though the landlord served the notice in the proper format and according to legislation, I find that the tenant was inconvenienced with having to move again in such a short period of time. Apart from the inconvenience and time spent to find another rental unit, the tenant will also incur the cost of moving.

Residential Tenancy Policy Guideline #16 states that an arbitrator may award "nominal damages" which are a minimal award. These damages may be awarded where there has been no significant loss, but they are an affirmation that there has been an infraction of a legal right.

Based on the above, I find it appropriate to award the tenant a nominal award of \$300.00 for the inconvenience of having to move twice in a short period of time.

6. Filing fee - \$100.00

Since the tenant has proven a portion of her claim, I award the tenant the recovery of the filing fee.

Overall the tenant has established a claim as follows:

1.	3 hours to file dispute – lost income	\$0.00
2.	Canada post	\$0.00
3.	Printing	\$0.00
4.	10% Utilities	\$112.11
5.	Moving to and from this address	\$300.00
6.	Filing fee	\$100.00
	Total	\$512.11

Accordingly, I grant the tenant a monetary order under section 67 of the *Residential Tenancy Act*, for this amount. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord an order of possession effective by **1:00 p.m. on December 31, 2019.**

I grant the tenant a monetary order in the amount of **\$512.11**

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 14, 2019

Residential Tenancy Branch