



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **MNDCT, LRE, CNC, FFT, OLC**

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- A monetary award for damages and loss pursuant to section 67;
- An order to restrict the landlord's right to enter the rental unit pursuant to section 70;
- Cancellation of a 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") pursuant to section 47;
- Authorization to recover the filing fee from the landlord pursuant to section 72; and
- An order that the landlord comply with the Act, regulations or tenancy agreement pursuant to section 62.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

As both parties were present service was confirmed. The parties each confirmed that they were served with the pertinent materials. Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the Act.

### Issue(s) to be Decided

Should the 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Is the tenant entitled to a monetary award?

Is the tenant entitled to any of the other relief sought?

### Background and Evidence

This periodic tenancy began in September 2018. Monthly rent is \$1,450.00 payable on the first of each month. The rental unit is a suite in a detached home with the landlord occupying the balance of the property. A security deposit of \$675.00 was collected at the start of the tenancy and is still held by the landlord.

A copy of the written tenancy agreement and addendum was submitted into evidence. The tenant disputes that the copy of the addendum is an accurate version and says that there exists a different draft with different clauses. The tenancy agreement provides that internet and electricity is not included in the rent and that "electricity is to be in the tenants name landlord will pay \$100/month for basement suite hydro".

The tenant submits that the electricity usage has significantly increased over the past year. The tenant attributes the higher electricity bills to the landlord's use including additional occupants and appliances drawing power. The tenant submitted into evidence copies of hydro bills as evidence of the increased costs. The tenant seeks a monetary award in the amount of \$260.00 for the increased electricity usage not covered by the \$100.00 paid monthly by the landlord.

The tenant testified that there was an incident where the landlord was loud and disruptive in their suite, playing music until 3:30am and that police were called. The tenant submits that as a result of the disruption they suffered a loss of income and seeks a monetary award of \$170.00.

The tenant also submits that they have complaints about the landlord's conduct and seek an order prohibiting them from entering the rental suite and complying with the Act, regulations or tenancy agreement.

### Analysis

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing the parties discussed the issues between them, turned their minds to compromise and achieved a resolution of a portion of their dispute.

Both parties agreed to the following final and binding settlement of the following issues currently under dispute at this time:

1. This tenancy will end at 12:00 p.m. on April 30, 2020, by which time the tenant and any other occupants will have vacated the rental unit.
2. Both parties agree that this tenancy ends by way of this agreement and the 1 Month Notice of January 1, 2020 is cancelled and of no further force or effect.

Both parties testified that they understood and agreed to the above terms, free of any duress or coercion. Both parties testified that they understood and agreed that the above terms are legal, final, binding and enforceable, which settle the issue of the cancellation of the 10 Day Notice.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

The tenancy agreement submitted into evidence clearly shows that the parties agreed that electricity is not included in the rent and that the landlord will pay an amount of \$100.00 each month to the tenant. No evidence was submitted that the landlord has not paid their share of the electricity bill as provided in the agreement. While the tenant stated that the addendum to the tenancy agreement submitted is not the original copy she agreed to, no evidence was provided that another copy exists or what additional agreements it may contain.

The tenant seeks a monetary award for additional payments towards the electricity bills. I find that this does not arise from any breach on the part of the landlord but simply the tenant's dissatisfaction with the agreement they entered and seeking to alter the terms of the agreement. There is no provision that allows the tenant to demand more money from the landlord when the utility bill increases. I find that the tenant's monetary claim does not arise from any breach on the part of the landlord and I therefore dismiss this portion of the claim.

The tenant makes a claim for a monetary award for loss of quiet enjoyment pursuant to section 28 of the Act. That section provides in part:

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;

Residential Tenancy Policy Guideline 6 further discusses quiet enjoyment and provides that:

Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

The evidence of the tenant is that there was one evening where the landlord was playing loud music at an unreasonable hour. The tenant provided copies of correspondence showing their complaint as well as calls made to the police. There is little evidence that this behavior was ongoing, frequent or anything more than a one-time incident. I find that the inconvenience of one night is not sufficient basis for a monetary claim on the basis of a breach of quiet enjoyment. I therefore dismiss the tenant's application.

The tenant writes in their own submissions that they do not have evidence of the landlord entering the rental unit without authorization and their submissions pertaining to an order that the landlord comply with the Act, regulations or tenancy agreement consists of hearsay complaints that they have failed to provide. I find that the tenant has not met their evidentiary burden of showing on a balance of probabilities that there has been any conduct by the landlord that would give rise to an order. Accordingly, I dismiss this portion of the tenant's application.

As the tenant was not successful in their application they are not entitled to a return of the filing fee.

### Conclusion

To give effect to the settlement reached between the parties and as discussed at the hearing, I issue the attached Order of Possession to be used by the landlord **only** if the

tenant fails to vacate the rental unit by 12:00 p.m. on April 30, 2020. The landlord is provided with this Order in the above terms and the tenant must be served with this Order in the event that the tenants do not vacate the premises by 12:00 p.m. on April 30, 2020. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I dismiss the balance of the tenant's application without leave to reapply.

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: March 17, 2020

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Residential Tenancy Branch