



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding KAS520 Strata/Lake Okanagan Resort - 1  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes:** *MNDC, OLC, RR, PSF, LRE*

### **Introduction**

This hearing dealt with an application by the tenant, pursuant to the *Residential Tenancy Act*. The tenant applied for a monetary order for compensation for the loss under the *Act*, for a rent reduction and for an order directing the landlord to comply with the *Act* and provide services or facilities. The tenant also for an order to suspend or set conditions on the landlord's right to enter the rental unit.

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 parties represented themselves.

The tenant named two other parties as landlords in this matter. The owner of the rental unit explained that the rental unit is attached to a resort and governed by a strata council. The tenant named the strata and the owner of a neighbouring unit as landlords in this matter. Since neither are owners/landlords of this rental unit, their names have been removed from the style of cause.

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*. I have considered all the written evidence and oral testimony provided by the parties but have not necessarily alluded to all the evidence and testimony in this decision.

### **Issues to be decided**

Is the tenant entitled to compensation and to the other remedies he has applied for?

### **Background and Evidence**

The tenancy started on October 01, 2019 for a fixed term with an end date of June 30, 2020. A copy of the tenancy agreement was filed into evidence. The monthly rent is \$1,100.00 due on the first of each month. The tenant agreed that he owes a total of \$2,400.00 in unpaid rent. Prior to moving in the tenant paid a security deposit of \$550.00 and a pet deposit of \$275.00.

The landlord stated that the rental unit is a self-contained suite located on property that belongs to a resort. The rent includes the use of the recreational facilities that are attached to the resort and include a sauna, pool, beach, hiking trails and golf course.

The landlord testified that due to Provincial Orders related to the current pandemic and resulting lock down, the sauna and pool are shut down and the hiking trails are not maintained for lack of staff. The tenant stated that since these facilities are part of his rent, he is claiming a rent reduction.

Also due to the pandemic the resort staff refused to handle incoming mail and since May 15, 2020 the tenant has not received his mail. The landlord testified that the tenant was informed that he needed to rent a mailbox for the duration of the pandemic and there are mailboxes available at a cost of \$68.00 for three months.

The tenant stated that the local municipality has issued a water advisory and the tenant is claiming compensation for the cost of bottled water. The tenant stated that drinking boiled water has made both him and his roommate sick.

The tenant also stated that the landlord did not have snow removal services during winter which resulted in a loss of income for him when he was unable to leave home. The landlord stated that at the time of signing the tenancy agreement the tenant was notified that there were about two weeks during winter that the area became snow bound and being on the side of a hill, it was too dangerous to use the roads in and out of the area. The landlord added that he recalled commenting that the since the tenant worked from home, he would not be impacted by the problem.

The tenant denied having been given this information at the start of tenancy and is claiming loss of income for the times in winter that he was unable to use the roads in and out of the area. The tenant did not file any documents to support his testimony of having incurred a loss of income.

The tenant also stated that there is no proper garbage collection or recycling facilities. The landlord stated that there is a dumpster available for garbage and the tenant agreed that from the start of tenancy, he has been using the dumpster provided by the landlord to dispose of garbage.

The tenant stated that the landlord entered the unit without proper notice. The landlord denied this and stated that he does provide proper notice. The landlord filed copies of emails to the tenant requesting an appointment to visit and providing adequate notice. The tenant has applied for an order restricting the landlord's entry into the rental unit. The landlord agreed to visit the unit for the purpose of maintenance, only at the tenant's request and agreed to continue serving the tenant with proper written notice if he needed to visit the unit for other purposes.

The tenant complained of noise disturbances coming from the unit above and notified the landlord of the problem in March 2020. The landlord contacted the owner of the unit and informed him of the problem. The landlord followed up with multiple emails to the owner of the unit above. The landlord stated that the occupants of the unit above complained of vandalism of their vehicles by the tenant. The owner of that unit informed the landlord that there is an ongoing dispute between these tenants.

The tenant has claimed a total of \$4,400.00 as compensation but has not provided a breakdown of his claim. He has also applied for rent reduction of \$500.00.

## **Analysis**

### **Recreational Facilities**

Based on the testimony of both parties, I find that the problems presented by the tenant regarding the closure of the recreational facilities, for which he is requesting compensation, allegedly started in late March 2020 when the state of emergency was declared by the Province.

Due to the policy of social distancing imposed by the Province, the resort was forced to shut down the pool and the sauna. Essential services were the only businesses permitted to operate and therefore employees of all nonessential businesses were required to stay home and observe a lock down.

The landlord stated that due to lack of staff the trails were not maintained, not safe to use and therefore shut down.

*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.

Even though the landlord did not provide these facilities that are included in the tenancy agreement, I find that it was not from choice. However, the closure of these facilities did reduce the value of the tenancy. Pursuant to *Residential Tenancy Policy Guideline #16*, I find that the tenant is entitled to a minimal award.

*Residential Tenancy Policy Guideline 6* states: “in determining the amount by which the value of the tenancy has been reduced, the arbitrator should take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use the premises, and the length of time over which the situation has existed”.

I find it appropriate to award the tenant a rent reduction of \$100.00 effective April 01, 2020 and on, until the tenant regains use of the recreational facilities.

#### Mailbox

The landlord testified that due to the Pandemic, the front desk staff at the resort have refused to handle mail for the tenant and all other occupants of the property. The tenant was advised to rent a mailbox effective May 15, 2020 at a cost of \$23.00 per month.

Since the start of tenancy, the tenant received mail via the staff at the front desk, I find it appropriate to award the tenant a rent reduction of \$23.00 per month for the cost of a mailbox, effective May 15, 2020.

#### Clean drinking water

The local municipality issued an advisory to consume boiled drinking water. I find that the tenant must follow the advisory and the landlord is not responsible for the inconvenience to the tenant.

#### Snow Removal

The landlord stated that he had informed the tenant prior to the start of tenancy that the location of the rental unit usually gets snow bound for approximately two weeks each winter. The landlord stated that being on the side of a hill makes it dangerous for snow ploughs to clear the snow and for vehicles to use the roads in and out of the area. The tenant denied having been provided with this information.

In this case, I find that I prefer the testimony of the landlord who remarked about the tenant working from home and therefore suffering little to no impact of being snow bound. Therefore, I find on a balance of probabilities that it is more likely than not that the tenant was made aware of the possibility of becoming snow bound in winter, at the time of signing the tenancy agreement and still chose to rent the unit. Accordingly, I find that the tenant is not entitled to compensation.

#### Recycling and garbage collection

The tenant agreed that the landlord has provided dumpsters for garbage collection. Therefor the tenant's claim for compensation is dismissed.

#### Set conditions or restrict landlord's entry into the rental unit

The tenant stated that the landlord did not provide proper notice prior to visiting the rental unit. The landlord denied the allegation and filed documents to support his testimony. During the hearing the parties agreed that the landlord would visit at the tenant's request and continue to provide proper notice for all visits.

I find that the tenant has not proven reason for an order restricting or setting conditions on the landlord's right to enter the rental unit.

#### Noise disturbances

Based on the testimony of both parties, I find that a dispute exists between the tenant and the occupant of the unit above. Upon receiving complaints from the tenant, the landlord contacted the owner of the unit above and discussed the problem. Both tenants had complaints of noise and vandalism, against each other.

A landlord can be held responsible for the actions of other tenants if it can be established that the landlord was aware of a problem and failed to take reasonable steps to correct it.

In this case, I find that the landlord took steps in a timely manner to address the conflict between the tenant and his neighbour and therefore the tenant's claim for compensation is dismissed.

Based on the testimony of both parties and documents filed into evidence, I find that the tenant has established his claim for a rent reduction of \$100.00 effective April 01, 2020 for the loss of the sauna, the pool and the trails.

I also find that the tenant has established his claim for a rent reduction of \$23.00, for the loss of mail service, effective May 15, 2020.

The tenant agreed that he owed \$200.00 for rent for April 2020 and has not paid rent since then. With the rent reduction granted to the tenant, rent owed is as follows:

1.	April 2020	\$100.00
2.	May 2020	\$988.00
3.	June 2020	\$977.00

Effective July 01, 2020, the tenant's rent will be \$977.00 for the period that the recreational facilities and mail service are unavailable. Upon restoration of these services the rent will return to \$1,100.00.

### **Conclusion**

The tenant has been granted a rent reduction as per the table above.

The remainder of the tenant's application is dismissed.

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: June 15, 2020

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Residential Tenancy Branch