



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCT

### Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for a monetary order for damage or compensation under the Act for the Tenants from the Landlord.

The Tenants, C.L. and C.D., and the Landlord, E.W., appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenants and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

### Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing.

During the hearing, the Applicant, C.D., advised that her last name is the same as that of the Applicant, C.L.; therefore, I amended the Applicant's name in the Application, pursuant to section 64(3)(c) and Rule 4.2.

Issue(s) to be Decided

- Are the Tenants entitled to a Monetary Order, and if so, in what amount?

Background and Evidence

The Parties agreed that the rental unit was a manufactured home, but that it is not kept in a manufactured home park; it is rented by the Tenants from the Landlord. The Parties agreed that the periodic tenancy began on September 1, 2018, with a monthly rent of \$700.00, due on the first day of each month. However, later in the hearing, the Landlord referred to the tenancy as having started “in the midst of fires here in 2017.” The Landlord also said that the rent was \$450.00, plus \$250.00 for the amount the Tenants paid the Landlord for the use of a shop on the residential property. It is not clear why the Landlord believes that the rent of the shop on the residential property is not part of the overall rent paid for the services and facilities provided. However, the amount of rent paid is not an issue before me.

The Parties agreed that the Tenants did not pay the Landlord a security or pet damage deposit. In her written submissions, the Landlord said that she waived the need for deposits and the first month’s rent, on the condition that the Tenants would install the new flooring that the Landlord provided for the rental unit. The Landlord said that they did not install the flooring properly, and so, she now has to hire another person to install the flooring and the baseboards properly.

The Tenants said that they ended the tenancy, because: “Things had become so hostile and we no longer felt welcome, so we found another home.”

The Tenants testified that they paid the Landlord their rent in full during the state of emergency in British Columbia however, they said that the Landlord also received the government Covid-19 subsidy, due to the state of emergency declared. The Landlord did not dispute that the Tenants paid their rent in full in the Spring and summer of 2020, until the tenancy ended on June 30, 2020.

The Landlord said that she received the supplement payments from the government. She said:

I phoned the supplement office: ‘What am I supposed to do with this money; they already paid?’ I was told to hang on to the money in case it was needed in the future. When I told [C.L.] this on the phone, he was angry, and I said he wasn’t going to deal with that and hung up.

When the tenancy ended, I kept the funds. [C.L.] only got angry. He gave me ultimatums. Someone has to pay for the damages that were done to the property. I haven't claimed for the damages. Left it as it was. I don't know what they're after or what their problems are. At no time did I receive a notice that they were moving out. He phoned and said he was going to email me the notice. I didn't receive it. I never received a notification that they were moving out.

They gave me the keys; I knew they were out. But when they gave me the keys, Mr. [L.] said I owed him all this money. He didn't want to listen. He said I had 15 days to pay, then he slapped this notification on my porch.

I was paid \$1,500.00 in subsidies. I received that money and they . . . used part of that – they didn't pay rent for the residence of the shop for June. When I questioned the subsidy and asked why they were overpaying the rent, they said that's just the way that system was set up.

The Tenants said:

We did give her written notice – delivered it to her home. And with Covid protocols, we knocked and told her the notice was there. We tried to speak with her on the phone several times. Myself and my husband, but she had no interest in speaking with us and hung up.

She refused to do a walk-through at end of the tenancy. We couldn't discuss damages that were there prior to our rental. We did offer to remain in her parking lot, and her come out on her porch, so that we can social distance. And my husband has been social distancing throughout the pandemic.

The Landlord said:

[C.L.] phoned and said they were coming over to bring the keys back. And could we do a walk-through. I said yes, I will, providing you are masked and gloved. He got annoyed, but he said we didn't do one when we moved in. When they arrived at my door to give me back the keys, Ms. [L.] was busy recording everything on her cell phone. I said please leave everything on the planter. I am very conscious of [Covid...] . . .; he made a major production, and they filmed themselves returning the keys.

She said:

They gave me notice that they were moving. I still have \$800.00 received from the supplement that has not been returned for the following reasons:

1. Unit was left dirty and had to be cleaned at my cost.
2. Flooring had to be lifted and reinstalled at my cost.
3. Curtains have been removed and will be replaced at my cost.
4. Monies may have to be returned to BC Housing for the Covid Supplement as the rules were very clear and receiving \$500.00 for monthly rent that is only \$450.00 per month far exceeds the allowable percentage that was given.

The Tenants said:

Just that we – I'm a little frustrated by the whole situation. The trailer needed work done when we came into the trailer. Some photos were out of context and some were there when we moved in. We just want the monies that we were owed. During the pandemic, I wasn't working, and we needed more money. I feel there is an abuse of power. I want this all said and done with, and everyone moves on with their lives.

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

I find from her testimony and written submissions that the Landlord acknowledges that the Tenants overpaid their rent during the state of emergency, since the Landlord received the Covid-19 subsidy from the government during this time.

I find that the Landlord feels she can keep the subsidy funds in order to do repairs to the rental unit. However, the Landlord did not apply for dispute resolution to claim against the Tenants for compensation for any damages.

Sections 5, 6 and 7 address the need for landlords and tenants to comply with the Act regarding disputes that arise during a tenancy.

### **This Act cannot be avoided**

**5 (1) Landlords and tenants may not avoid or contract out of this Act or the regulations.**

(2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.

[emphasis added]

### **Enforcing rights and obligations of landlords and tenants**

**6** (1) The rights, obligations and prohibitions established under this Act are enforceable between a landlord and tenant under a tenancy agreement.

(2) A landlord or tenant may make an application for dispute resolution if the landlord and tenant cannot resolve a dispute referred to in section 58

(1) [*determining disputes*].

(3) A term of a tenancy agreement is not enforceable if

(a) the term is inconsistent with this Act or the regulations,

(b) the term is unconscionable, or

(c) the term is not expressed in a manner that clearly communicates the rights and obligations under it.

### **Liability for not complying with this Act or a tenancy agreement**

**7** (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

I find from the evidence before me overall, that the Parties agree that the Landlord received the full amount of rent payment from the Tenants, in addition to having received \$800.00 in subsidy payments from the government. I find these subsidies were intended to supplement insufficient rent payment by the Tenants; they were provided to help both tenants and landlords when tenants had difficulty paying rent to landlords, because of the pandemic. The supplement was not provided to assist landlords with repairs to the rental unit.

I find that the Landlord did not apply for dispute resolution for any compensation she feels she is owed by the Tenants, pursuant to the tenancy. As such, I find that that the Landlord has not established a right under the law to retain the \$800.00 subsidy relief she received from the government. I find that the Landlord owes this money to the

Tenants. I, therefore, award the Tenants with **\$800.00** from the Landlord pursuant to section 67 of the Act.

### Conclusion

The Tenants are successful in their Application. The Parties provided sufficient evidence to establish that the Landlord received \$800.00 in rental subsidy from the B.C. government that was supposed to supplement the Tenants' rent payment. However, the Tenants paid their rent in full, and therefore, the Landlord was not eligible to retain the supplemental payments from the government.

The Tenants are granted a Monetary Order of **\$800.00** from the Landlord pursuant to section 67 of the Act.

This Order must be served on the Landlord by the Tenants and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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 12, 2020

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Residential Tenancy Branch