



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNL, OLC, RR, FFT

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order cancelling a notice to end the tenancy for landlord's use of property; an order that the landlord comply with the *Residential Tenancy Act*, regulation or tenancy agreement; an order reducing rent for repairs, services or facilities agreed upon but not provided; and to recover the filing fee from the landlord for the cost of the application.

The landlord and the tenant attended the hearing on the first scheduled date. The tenant gave affirmed testimony and the landlord was given the opportunity to question the tenant. However the hearing did not conclude and was adjourned to continue. My Interim Decision was provided to the parties which also included a notice to the parties with respect to the date and time of continuation and the phone number and passcodes for the parties to use to access the conference call hearing.

The tenant attended on the second scheduled date and called 2 witnesses who also gave affirmed testimony. However the line remained open while the telephone system was monitored for 10 minutes prior to hearing any testimony, and no one for the landlord joined the call.

At the commencement of the first scheduled date of the hearing, the tenant advised that the tenant has vacated the rental unit and the tenant withdrew the applications for an order cancelling a notice to end the tenancy for landlord's use of property, and for an order reducing rent for repairs, services or facilities agreed upon but not provided.

The tenant also explained that the application for an order that the landlord comply with the *Act*, regulation or tenancy agreement seeks monetary compensation, and all evidence in support of the application has been provided to the landlord. The tenant's

application shows that the tenant seeks certain compensation for damage or loss. During the course of the hearing the tenant also sought a monetary order for return of the security deposit, however that matter is not contained in the application, and I find that the landlord has not been put on notice that the application includes that claim.

The tenant also advised during the course of the hearing that the landlord has made an application for an order permitting the landlord to keep the security deposit and a claim for damages. The hearing is scheduled for some time in April, 2021.

Since the landlord has not had prior notice of the tenant's intention of applying for the security deposit in this hearing, I decline to consider it. The tenant may make an application and ask that it be joined to be heard with the landlord's application. I leave it to the parties to have the security deposit dealt with in the April, 2021 hearing.

No issues with respect to service or delivery of documents or evidence were raised, and all evidence provided, relevant to the tenant's application for monetary compensation, has been reviewed and is considered in this Decision.

#### Issues to be Decided

The issue remaining to be decided is:

- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement?

#### Background and Evidence

**The tenant** testified that the parties agreed to a tenancy on a fixed-term basis commencing August 1, 2019 and reverting to a month-to-month tenancy after 1 year, which ultimately ended on December 6, 2020. A copy of the tenancy agreement has been provided as evidence for this hearing. Rent in the amount of \$1,600.00 was payable on the 1<sup>st</sup> day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$800.00 and no pet damage deposit was collected. No move-in or move-out condition inspection reports were completed.

The tenant further testified that the tenancy agreement specified the upper level of the rental home, however when the tenant arrived, the landlord advised that his plans had changed and he had not yet moved out of the upper level but the tenant could move into the basement suite temporarily until the landlord could vacate. The basement suite was much smaller so the landlord helped the tenant move her belongings into the basement

and a “shed” which was only a fabric tent. The landlord said that the tenant’s belongings would be safe, and it would only be temporary until the tenant moved upstairs, which would be within a month. The landlord told the tenant every month that she could move into the upper level the following month, but it never happened.

For the first month of the tenancy the tenant paid the full \$1,600.00 for rent and the security deposit. Around April, 2020 the landlord reduced rent to \$1,050.00 for being in the basement suite. The landlord required the tenant to pay cash and never gave receipts. Some reductions in rent were made prior to April and the landlord said that was because the tenant didn’t move upstairs as promised.

While the tenant’s belongings were in the tent a number of items were damaged; a wooden kitchen table, 6 chairs, picture frames, 2 bed frames, boxes of books and a mirror. Photographs have been provided. A tree fell on the tent some time in November, 2020, apparently during the day while the tenant was at work, and no one told the tenant about it, and some of her belongings were still in the tent. By that point, the tenant had already rented a storage locker when she discovered that her belongings were being destroyed, and moved some of her belongings, so none of the tenant’s items were damaged from the fallen tree.

The landlord kept taking the tenant’s propane tank for his own use, and allowed a man who was staying on the property in his truck to use the propane tank and refused to re-fill it.

During the tenancy, mice and rodents started to enter the basement suite, which ate away at the tenant’s kitchen items, her daughter’s headphones, and work shoes.

Also during the tenancy the tenant gave the landlord \$300.00; the landlord was going to create a cinema room, but the wall was never put up.

After the tenant moved in, the landlord told the tenant that water is sparse and hit and miss on what day there was water, and that the tenant could only do 2 loads of laundry on Sundays, for the tenant and her 3 children. The tenant was not aware of any water issues prior to moving in.

The landlord served the tenant with a Two Month Notice to End Tenancy For Landlord’s Use of Property, a copy of which has been provided for this hearing. It is dated October 15, 2020 and contains an effective date of vacancy of December 15, 2020. The reason for issuing it states, in hand-writing: “\*Expired Lease. Month to month rental completed. Water supply issues.” The Notice was accompanied by a letter from the landlord dated October 15, 2020 along with a Mutual Agreement to End Tenancy, and

the letter states: "... I have used both versions: Two Month Notice to End, as well as the Mutual Agreement which you can decide to use for your records." The Mutual Agreement to End Tenancy is effective at 1:00 p.m. on December 15, 2020 and is signed by the landlord, but not by the tenant. The tenant vacated on December 6, 2020 and the landlord gave the tenant a pro-rated amount of rent of \$846.75 for December.

The tenant personally gave the landlord her forwarding address in writing on the tenant's notice to end the tenancy on November 26, 2020. The landlord returned to the tenant the sum of \$349.60 of the security deposit by e-transfer, but the tenant has not yet accepted the e-transfer and did not agree that the landlord keep any portion of it. The landlord has served the tenant with an Application for Dispute Resolution claiming against the security deposit, and the hearing is scheduled for April, 2021.

The tenant claims:

- \$300.00 for the landlord failing to create the cinema room;
- \$600.00 for damages to property in the landlord's fabric tent;
- \$20.00 for refilling the propane tank;
- \$50.00 for items damaged by rodents; and
- \$150.00 for lack of water.

The tenant's written material in the evidence includes a claim of \$2,000.00 for: lack of sleep, stress (emotionally, physically and mentally), frustrations, tension, anxiety and loss of enjoyment. It also claims storage fees of \$121.35 and recovery of the \$100.00 filing fee. The tenant has also provided receipts for the cost of producing photographs for this hearing.

**The tenant's first witness** (SB) is the tenant's cousin and testified that he helped the tenant to move into the rental unit with 2 truck loads. Because the basement suite was smaller than the upper level of the rental home, the landlord told the tenant that she could use a cloth shed temporarily. It had no floor, only dirt, and canvass covering, so the witness was concerned and asked the landlord if it would be safe. The landlord replied that it was safe and only temporary.

**The tenant's second witness** (RE) is a friend of the tenant and testified that he visited the tenant between September and December, 2020 in the rental unit. The witness had hoped to move into the basement suite after the tenant moved upstairs, understanding that the tenant's occupation of the basement suite was temporary. The witness and the landlord exchanged text messages, and it appeared that at the end of December, 2019 at the latest, the witness would be able to move in. Then it changed to January, 2020 before the tenant would be out, and then something came up and the landlord said

maybe in February. The witness called the landlord once in February stating that he needed to move into the basement suite by the end of March at the latest, and the landlord said that wouldn't be a problem. By the 15<sup>th</sup> of March the tenant had not heard from the landlord, so the tenant told the landlord that he's a flake and the witness found another place to live.

### Analysis

I have reviewed all of the evidentiary material and I note that the tenancy agreement specifies that the tenancy was for the upper level of the rental home. There is no question that the tenant didn't get what she contracted for. The tenant was promised month after month that the living situation was temporary, and I find that the promised move to the upper level of the home was a material term of the tenancy agreement. I accept the tenant's claim of **\$2,000.00** for: lack of sleep, stress (emotionally, physically and mentally), frustrations, tension, anxiety and loss of enjoyment.

During the first scheduled day of the hearing the landlord had an opportunity to question the tenant about giving the landlord \$300.00 to create a cinema room, but he did not. Therefore, I accept the undisputed testimony that the tenant gave the landlord **\$300.00** for that purpose, which was never completed, and I find that the tenant has established that claim.

Although the tenant has not provided receipts or proof of the value of the items damaged in the tent, I am satisfied that the landlord's action, or inaction, has caused the damage to the tenant's belongings. The photographs show boxes full of mold and dirt, boxes broken open due to moisture, moldy blankets, damaged furniture and weather beaten items. The *Act* does not permit me to make a monetary order to punish the landlord, but does permit nominal damages where the value is not straightforward. Considering the number of items and the clear damage, I find that the tenant's claim of **\$600.00** is justified, which I order also includes the claim for items damaged by rodents.

The landlord didn't dispute the tenant's claim of **\$20.00** for refilling the tenant's propane tank, and I find that the landlord had no right to use the propane for himself or a guest, and the tenant has established that claim.

If lack of water was an issue, the landlord ought to have notified the tenant of that prior to signing the tenancy agreement. The tenancy agreement says nothing about laundry, or lack of water, and I am satisfied that the tenant has established that usable water for her family was a material term of the tenancy agreement and the tenant is entitled to the claim of **\$150.00**.

I also find that the tenant did what was reasonable to mitigate any further loss suffered by renting a storage unit for her belongings, and I find that the tenant has established the **\$121.35** claim.

The landlord also served the tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property and quoted reasons for ending the tenancy that are contrary to the law. The *Act* specifies how a tenancy ends, and in the case of this type of notice, a landlord must provide the tenant with compensation equivalent to 1 months' rent. It is not clear whether or not the landlord has done so, but the tenant testified that the landlord reimbursed the unused portion of December's rent, and I make no further orders or findings with respect the Two Month Notice to End Tenancy for Landlord's Use of Property.

The tenant has provided receipts for producing photographs for this hearing and to serve on the landlord. The *Residential Tenancy Act* provides for recovery of a filing fee but not for recovery of the costs of serving documents or preparing for a hearing, and therefore, I dismiss the tenant's claim for producing photographs and evidence.

Since the tenant has been partially successful, the tenant is also entitled to recovery of the **\$100.00** filing fee.

### Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of **\$3,291.35**.

The balance of the tenant's application is hereby 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: January 05, 2021

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Residential Tenancy Branch