



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Whistler Blackcomb Holdings  
and [tenant name suppressed to protect privacy]

## DECISION

Dispute Codes

**CNE, MNDCT, RR, OLC**

### Introduction

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

- Cancellation of a 1 Month Notice to End Tenancy for End of Employment pursuant to section 48;
- A monetary award for damages and loss pursuant to section 67;
- A reduction of rent for services or facilities agreed upon but not provided pursuant to section 65; 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. The corporate landlord was represented by its agents and counsel. Counsel MV (the "landlord") primarily spoke on behalf of the landlord.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

At the outset of the hearing the parties confirmed that this tenancy has ended in accordance with an Order of Possession issued in an earlier hearing under the file number on the first page of this decision. The issue of the 1 Month Notice has been

conclusively dealt with in the earlier decision and the tenant accordingly withdrew the portion of their application seeking cancellation of a 1 Month Notice.

Issue(s) to be Decided

Is the tenant entitled to a monetary award as claimed?

Is the tenant entitled to a reduction of rent as claimed?

Should the landlord be ordered to comply with the Act, regulations or tenancy agreement?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agree on the following facts. The rent for this tenancy was calculated at \$9.29/daily which was charged to the tenant by being deducted from their employment payment every bi-weekly pay period. There is currently an arrear of \$1,933.12 for unpaid rent owing.

The tenant seeks an order that the rental arrear be waived in its entirety. The tenant submits that there was a binding agreement between an agent of the corporate landlord where the tenant was promised that the amount would be waived.

The tenant also seeks a monetary award in the amount of \$370.00 representing a retroactive rent reduction for cable television services which they claim was included in their rent but cut off in March 2021 and for the cost of a parking passes which they did not authorize.

The landlord disputes the tenant's claims in their entirety. The landlord submits that any offer to waive the outstanding rental arrear was contingent on the tenant signing a release and this was communicated to the tenant clearly and repeatedly. The tenant's documentary evidence includes copies of email correspondence where the tenant demands waiver of the outstanding arrear and the landlord's agents reminding the tenant of the need to sign the release if they wished to accept the offer.

### Analysis

In accordance with Residential Tenancy Rule of Procedure 6.6 the onus to establish their claim on a balance of probabilities lies with the applicant.

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.

Based on the totality of the evidence I find that the tenant has not met their evidentiary onus for any portion of their application. I find the tenant's submission that there was a valid and enforceable agreement between the parties whereby the landlord would waive all outstanding rent without requiring any consideration from the tenant to be disputed by the landlord in testimony and the tenant's own documentary materials.

The circumstances demonstrate a basic example of common law contracts. I find it plainly evident that the parties did not enter into an agreement but that the landlord had made an offer contingent upon the tenant's acceptance by signing the release. The tenant made a counteroffer that the landlord waive all outstanding debts and allow the tenant the freedom to bring additional claims against the landlord in the future. The landlord declined to accept the counteroffer made by the tenant and there was no agreement between the parties.

The tenant now submits that the initial offer made by the landlord's agent constitutes a binding agreement which is a position not supported in their documentary materials, legislation, common law, or reason.

I find that there was no agreement between the parties allowing for the waiver of the outstanding unpaid rent. Consequently, I dismiss this portion of the tenant's application.

I find insufficient evidence in support of the tenant's claim for a reduction of rent to reflect a parking pass and cable television services. The copy of the tenancy agreement submitted into evidence by the tenant is silent on the subject of amenities

included in the rent and I find little evidence that the services referenced by the tenant were offered or were subsequently withheld. Similarly, I find insufficient evidence that parking fees were charged against the tenant or that these charges were without merit. I find the tenant has not met their evidentiary burden to establish these claims and accordingly dismiss them.

I note parenthetically that the tenant testified that their refusal to sign a release stems from their intention to bring further actions against the landlord. While I cannot determine the merits of potential actions that are not before me, I caution that continued filing of meritless applications may be found to be an abuse of the dispute resolution system to be investigated by the Compliance and Enforcement Unit of the Branch and subject to administrative penalties.

### Conclusion

The tenant's application is dismissed in its entirety 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: June 29, 2021

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Residential Tenancy Branch