



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 1287039 BC LTD. and [tenant name  
suppressed to protect privacy]

## **DECISION**

### **Dispute Codes**

**LL: OPL**

**TT: RR, MNDCT, OLC, PSF, LRE, CNL-MT, FFT**

### **Introduction**

This hearing dealt with applications from both the landlord and tenants pursuant to the *Residential Tenancy Act* (the “Act”).

The landlord applied for:

- An order of possession pursuant to section 55.

The tenant applied for:

- A reduction of rent for repairs, services or facilities not provided pursuant to section 65;
- A monetary award for damages and loss pursuant to section 67;
- An order that the landlord comply with the Act, regulations or tenancy agreement pursuant to section 62;
- An order that the landlord provide services or facilities pursuant to section 70;
- An order restricting the landlord’s right to enter the rental unit pursuant to section 70;
- More time to file the application to cancel a 2 Month Notice to End Tenancy for Landlord’s Use pursuant to section 66;
- Cancellation of the landlord’s 2 Month Notice pursuant to section 49; and
- Authorization to recover the filing fee from the landlord pursuant to section 72.

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 agent (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*.

### Issue(s) to be Decided

Should the 2 Month Notice be cancelled? If not is the landlord entitled to an Order of Possession?

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

### 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.

This periodic tenancy began in 2011. The monthly rent is \$1,990.00 payable in two installments of \$995.00 on the first and 20<sup>th</sup> of each month. No deposit has been collected for this tenancy. The rental unit is a single detached home with a backyard.

The undisputed evidence of the parties is that the landlord commenced construction and work in the rental unit backyard in March 2021. The work included changing the placement of the fence delineating the border with the adjoining property, cutting down trees and construction on a building in the yard. The work was halted when the municipality issued a stop work order as the landlord did not have the necessary permits for all of their activities.

The tenant gave evidence about how the loss of use of their backyard had significant negative impact on their family, from being unable to enjoy recreational activities to having workers frequently on the property. The tenant testified that the presence of workers resulted in a loss of reasonable privacy as they could peer in through windows, that the noise of ongoing construction was significant and disruptive and how the work done deprived them of a large area of the backyard. The tenant also said that the work involved cutting down several large trees which resulted in a loss of greenery, shade and exposure to the neighboring properties.

The tenant submitted into documentary evidence some photographs of the work, the layout of the property and the areas that they lost the use of due to the construction arranged by the landlord.

The tenant seeks a retroactive reduction in the rent of \$6,000.00 and aggravated damages in the amount of \$6,000.00. The tenant submits that the actions of the landlord has caused significant stress, loss of income due to time spent dealing with tenancy issues, a loss of quiet enjoyment and exclusive use of the rental property and emotional impact.

The landlord did not dispute the tenant's submissions and testified repeatedly that the work was done to accommodate their daughter getting married.

### 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 partial resolution of the issues in dispute.

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

1. The effective date of the 2 Month Notice of March 31, 2021 is extended to August 31, 2021.
2. The parties agree this tenancy will end on 12:00 pm, August 31 2021, by which time the tenant and any other occupants will have vacated the rental unit.
3. The landlord will refund the amount of \$995.00 to the tenant on August 31, 2021. The payment of this amount and the tenant's withholding of \$995.00 payable on August 20, 2021 will together comprise compensation in the amount of \$1,990.00 pursuant to section 51 of the *Act*.
4. This settlement agreement constitutes a final and binding resolution of landlord's application for an order of possession at this hearing and the portion of the tenant's claim seeking cancellation of the 2 Month Notice.

Both parties testified at the hearing 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 landlord's seeking an Order of Possession and the portion of the tenant's claim disputing the 2 Month Notice.

The parties were not able to come to an agreement in regard to the other aspects of the claim and I make the following finding on those issues.

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. This provision is also read in conjunction with paragraph 65 (1)(f) of the *Act*, which allows me to reduce the past rent by an amount equivalent to the reduction in value of a tenancy agreement.

The undisputed evidence of the parties is that the landlord commenced construction and work in the rental unit yard in March 2021. I accept that the loss of use of an area of the backyard and the ongoing construction work commissioned by the landlord has had a negative impact on the value of this tenancy. I accept the undisputed evidence of the tenant that their family was unable to enjoy activities in the backyard, changed their routines, and faced disruption even inside due to the presence of workers on and around the property. I accept the tenant's submissions that the disruption was ongoing, significant and unavoidable in the rental property.

While the tenant suggests the value of the loss is in the amount of \$6,000.00, I find insufficient evidence to support the full amount claimed. The evidence shows that the tenant and their family continued to reside in the rental unit. The loss of backyard had impact on their recreational activities but did not impact their other activities. I find that the disruption caused by the presence of workers and the ongoing noise had some impact on their daily activities but not so much that it required major alterations to their lifestyle. Similarly, I find the loss of trees and greenery has had some negative impact on the value of this tenancy but not to the degree suggested.

I find the landlord's repeated submission that their daughter was getting married to be no excuse for causing the disruption and diminishing the value of the tenancy.

Based on the foregoing, I find that a monetary award in the amount of \$1,200.00, approximately 10% for each of the six months of the tenancy after the landlord had reduced the size of the backyard and commenced work to be appropriate.

The tenant also seeks aggravated damages from the landlord. Aggravated damages are an award, or an augmentation of an award, of compensatory damages for non-pecuniary losses. (Intangible losses for physical inconvenience and discomfort, pain and suffering, loss of amenities, mental distress, etc.) Aggravated damages are designed to compensate the person wronged, for aggravation to the injury caused by the wrongdoer's behaviour. They are measured by the wronged person's suffering.

The damage must be caused by the deliberate or negligent act or omission of the wrongdoer. However, unlike punitive damages, the conduct of the wrongdoer need not contain an element of wilfulness or recklessness in order for an award of aggravated damages to be made. All that is necessary is that the wrongdoer's conduct was highhanded. The damage must also be reasonably foreseeable that the breach or negligence would cause the distress claimed.

They must also be sufficiently significant in depth, or duration, or both, that they represent a significant influence on the wronged person's life. They are awarded where the person wronged cannot be fully compensated by an award for pecuniary losses. Aggravated damages are rarely awarded and must specifically be sought.

In the present circumstances I am not satisfied that the landlord's behaviour has been so highhanded that an award for aggravated damages above the monetary award already issued for loss of value to the tenancy, is appropriate. I find the tenant's submissions and evidence to be insufficient to show that there is a basis for an extraordinary measure such as aggravated damages. Consequently, I dismiss this portion of the tenants' application.

As the tenant was partially successful in their application, I find it appropriate to issue an award for recovery of \$50.00, a portion of the filing fee for this application from the landlord.

I find the balance of the tenant's application pertains to relief for an ongoing tenancy. As this tenancy is ending, I find no need to make a determination on these portions of the application and dismiss them without leave to reapply.

Conclusion

To give effect to the agreement between the parties I grant an Order of Possession to the landlord effective **12:00pm on August 31, 2021**. Should the tenant or any occupant on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary order in the tenant's favour in the amount of \$2,245.00, comprised of the amount agreed to by the parties in their settlement, the retroactive reduction in the value of the tenancy and the filing fee. The landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: August 23, 2021

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Residential Tenancy Branch