



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCT, RR, RP, OLC, FFT

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking the following relief:

- a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement;
- an order reducing rent for repairs, services or facilities agreed upon but not provided;
- an order that the landlords make repairs to the rental unit or property;
- an order that the landlords comply with the *Act*, regulation or tenancy agreement; and
- to recover the filing fee from the landlords for the cost of the application.

Both landlords and both tenants attended the hearing. One of the landlords and both tenants gave affirmed testimony, and the tenants called 1 witness who also gave affirmed testimony. The parties were given the opportunity to question each other and the witness, and to give submissions.

No issues with respect to service or delivery of documents or evidence were raised, and all evidence provided has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

- Have the tenants established a monetary claim as against the landlords for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for harassment and loss of quiet enjoyment?

- Have the tenants established that rent should be reduced for repairs, services or facilities agreed upon but not provided, and more specifically internet and television?
- Have the tenants established that the landlords should be ordered to make repairs to the rental unit, including removal of a concrete stump?
- Have the tenants established that the landlords should be ordered to comply with the *Act*, regulation or tenancy agreement?

### Background and Evidence

**The first tenant** (GL) testified that this month-to-month tenancy began on October 14, 2017 and the tenants still reside in the rental unit. Rent in the amount of \$1,250.00 was originally payable on the 14<sup>th</sup> day of each month, which has been increased to \$1,255.00 per month, and there are no rental arrears. At the outset of the tenancy the landlords collected a security deposit from the tenants in the amount of \$625.00 which is still held in trust by the landlords, and no pet damage deposit was collected. No move-in condition inspection report was completed at the beginning of the tenancy. The rental unit is a basement suite, and the landlords reside in the upper level of the home. A copy of the tenancy agreement has been provided as evidence for this hearing.

The tenants have provided a Monetary Order Worksheet setting out the following claims, totaling \$16,060.00:

- \$200.00 per month as a rough estimate for unreliable TV and Internet;
- \$100.00 per month for parking;
- \$15,060.00 compensation for harassment, being 12 months' rent; and
- \$1,000.00, being \$100.00 for every month that stumps have been left on the property.

The tenant further testified that the television and internet are included in the rent, but very unreliable. At the beginning, the tenant texted the landlord about resetting the modem or TV, but the landlord wouldn't answer, and it's very hard to get ahold of the landlord. The internet was disconnected, but friends verified that it worked, using the same service provider. The tenant wrote to the landlord about reducing rent so that the tenants could get their own internet. The landlord said that he would keep giving the service, and the tenants could also get their own. The internet was down about 20 times in the last 5 months. The tenants claim \$200.00 for each month.

The tenant also testified that out of the blue the landlord put some branches on the tenant's parking spot, now the tenant's vehicle hangs off the property. The landlord changed the tenant's parking spot, restricting parking for everyone except himself. The landlord has a parking area for 2 vehicles, and now the tenant cannot park close to the house. The branches have been there since the beginning of spring. The tenant asked the landlord to remove them but he refused. The tenants claim \$100.00 per month for loss of their parking spot.

The tenants also claim \$15,060.00 as recovery of 12 months rent as compensation for the landlord's harassment. The landlord tried to remove the storage area, which was a verbal agreement when the tenants moved in, and it's in the rental suite. The tenants had use of the storage for 3 years and the tenant told the landlord that he would have to reduce rent, so he never mentioned it again.

The landlord also built an illegal deck and left 2 concrete stumps with rebar sticking out. The landlord built something over one of them, but the other is still there. Photographs have been provided. The tenant asked the landlord to remove it and the landlord's lawyer said he would remove it by the end of May or June, 2021, but it's been there for about a year and is still not done. After the tenant wrote letters to the landlord, the landlord covered the stump with a bucket, but it's not bolted, is easy to knock over and is not adequate. The tenant claims \$100.00 for each month that the stumps have been there.

The landlord constantly deflects the tenant to his lawyer. When the tenant pays rent, the landlord is rude, snug and takes it as an opportunity to harass the tenant and get the tenants to move out, so the landlord can re-rent for a higher amount. This is the 6<sup>th</sup> hearing between the parties, and the tenant testified that he always has to file a dispute to get the landlord to do anything.

Whenever the tenants have guests or have food delivered, the landlord restricts them from parking, even for 2 minutes, yelling at them.

The tenants seek an order that the landlord remove the concrete stump, and allow the storage area for the tenants, the parking spot, and TV and Internet.

**The second tenant** (AL) testified that she has been developing anxiety that has never happened before. The tenant is throwing up, and the stress of what the landlord might do next is affecting her work. The tenant cannot live freely in her home, and has made visitors very uncomfortable.

Some devices will connect the modem, but not all, including the internet. It's not the speed, but connecting to the modem is what the tenants have an issue with.

**The tenants' witness** is the father of one of the tenants and testified that he was present when the tenant tried to deliver rent to the landlord on July 14, 2021. The interaction between the parties was strange; like neither of them wanted to be there.

When the witness visited, the tenants' parking spot was directly across from the front door of the rental unit, and was parked there for a year or 2 since the tenants moved in.

The only time the witness had direct contact with the landlord was during a visit, parking where the witness usually parked. The landlord said that the witness couldn't park there, that the tenants had a spot assigned and told the witness to move his car immediately, which he did. The landlord was visibly upset; angry. It was absolutely not blocking any of the landlord's cars. The witness wasn't there long, and visits were usually short. After the encounter with the landlord, the witness and his wife parked on the road.

**The landlord testified that** the tenancy agreement does not specify where the tenants' parking spot will be. A landlord is allowed to decide, and the spot was changed because the landlords didn't have access to the back yard. Written notice was given to the tenants with a diagram and the tenants didn't abide by that until April or May, 2021.

With respect to the concrete stump, the landlord testified that it is difficult to see it at night, but the light there is controlled from inside the rental unit. The tenants' scooters and bikes are on the walkway which are also trip hazards.

The landlords had to get a new modem and notified the tenants. The Shaw equipment is old and no longer supported. The new equipment isn't plugged into a wall, and the tenants wouldn't have any television if they didn't have WIFI. The landlords have gone above and beyond. They can get their own, but the landlord disagrees that rent should be reduced because the tenants would still have access.

The landlord denies harassing the tenants. When they moved in, the landlord gave notice of monthly inspections, and the tenants wrote back saying that the landlords didn't have a valid reason to enter, and wanted a better reason to inspect. The landlord gave notice on March 12, 2021 to inspect at 8:00 or 8:30 on March 14, 2021. The tenants asked for a new notice with a different time. An audio recording has been provided for this hearing, and the landlord testified that the tenants are swearing and attacking the landlords during an inspection.

The tenants have access to storage from their rental unit. The landlords had Christmas decorations in there, and advised the tenants that access would be changed, but the tenant said they require a proper reduction of rent. There was no verbal agreement, and the tenancy agreement does not include storage. The landlords just wanted to change access so the landlords wouldn't have to get the tenants to allow access for the landlords.

### Analysis

During the course of the hearing I notified the parties that I would be reviewing previous Decisions to ensure that I do not make any orders that are contrary to what has already been adjudicated upon.

The Decision dated May 24, 2018 states that the landlords required the tenants to pay an additional fee for cable and internet, and the landlords were ordered to repay the additional fees. In this case, the cable and internet are still not consistent, and I am quite satisfied that the inconsistencies are caused by the landlords. I order that the tenants be permitted to obtain their own services and I **reduce the rent by \$200.00 per month** commencing in September, 2021.

I agree with the landlord that the tenancy agreement doesn't specify where the parking will be, so obviously the tenants could park where the landlord usually parks and would not be in breach of the tenancy agreement. However, I don't believe that either party would consider that to be reasonable. I find that the landlord has deliberately inconvenienced the tenants, and parking with their vehicle hanging off the property is not reasonable either. What I find to be entirely reasonable is to order the landlord to provide the parking spot that the tenants originally had, being near the front door to the rental unit, and I so order. I order the landlords to remove all debris by August 31, 2021 and permit the tenants to park directly across the front door of the rental unit, free from all obstacles and debris.

With respect to the tenants' claim of \$100.00 per month for parking, the tenant did not provide a date that the landlords blocked the parking spot, testifying only that the debris has been there since the beginning of spring. Any such award must not be made to punish the landlord, and I am not satisfied that the tenants have suffered any loss as a result, however, I also order that if the landlords fail to remove the debris and any obstacles by August 31, 2021, the tenants may apply for further compensation due to the landlords' failure to comply with this order.

The tenants also claim \$15,060.00 as full recovery of 12 months' rent as compensation for harassment.

In this case, I find that it is very clear that the landlords want the tenants to move out. I refer to Residential Tenancy Policy Guideline #16 - Compensation for Damage or Loss, which states, in part:

In order to determine the amount of compensation that is due, the arbitrator may consider the value of the damage or loss that resulted from a party's non-compliance with the Act, regulation or tenancy agreement or (if applicable) the amount of money the Act says the non-compliant party has to pay. The amount arrived at must be for compensation only, and must not include any punitive element.

Referring also to Residential Tenancy Policy Guideline #6 – Entitlement to Quiet Enjoyment:

A tenant is entitled to quiet enjoyment, including, but not limited to the rights to:

- reasonable privacy;
- freedom from unreasonable disturbance;
- exclusive possession, subject to the landlord's right of entry under the Legislation; and
- use of common areas for reasonable and lawful purposes, free from significant interference.

A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

In determining the amount by which the value of the tenancy has been reduced, the arbitrator will take into consideration the seriousness of the

situation or the degree to which the tenant has been unable to use or has been deprived of the right to quiet enjoyment of the premises, and the length of time over which the situation has existed.

I find that the landlord's actions have amounted to nuisance and an attempt to convince the tenants to move out. I also consider the tenant's testimony that she has been suffering from anxiety that didn't exist before, throwing up, and the stress of what the landlord might do next is affecting her work, and she cannot live freely in her home. I am not satisfied in the circumstances that the tenants have established a claim equivalent to a full year of rent, however it's difficult to ascertain in the evidence when the breaches by the landlord commenced. I also consider the undisputed testimony of the tenant that in order to ensure that the tenants' rights are protected, the tenants have to file for dispute resolution, and this is the 6<sup>th</sup> hearing. It is clear to me that the landlords are not prepared to comply with the law by providing the tenants with quiet enjoyment of the rental unit, and I order that the landlords pay compensation to the tenants equivalent to 3 months rent, or **\$3,765.00**. I further order that the tenants be permitted to reduce rent for future months until that sum is realized, or may otherwise recover it by filing it in the Provincial Court of British Columbia, Small Claims division for enforcement.

The tenants also seek \$1,000.00, being \$100.00 per month for each month that the stumps have been in the yard. The tenant testified that the landlord deflects the tenants to his lawyer, and the landlords' lawyer said it would be removed by the end of May or June, 2021, but is still there. The tenant also testified that the back yard is part of the tenancy, which is where the stump remains. I find that the tenants' claim is reasonable, and I grant a monetary order in favour of the tenants in the amount of **\$1,000.00**, and I order that the tenants be permitted to reduce rent for future months until that sum is realized or may otherwise recover it.

The tenants also seek an order that the landlords make repairs to the rental property by removing the concrete stump. I reviewed the photographs, and I agree with the tenants that it is a safety issue for the tenants or the tenants' guests. I order the landlord to remove it or have it permanently covered by September 15, 2021, failing which the tenants will be at liberty to apply for compensation for the landlords' failure to comply with this order.

The tenant and the tenant's witness testified that the landlord is rude and angry when guests arrive or the tenants have food delivered, yelling at people, which is a restriction of guests and deliveries. The Decision of May 24, 2018 dealt with that issue and the

landlord agreed that guests cannot be unreasonably restricted, and since the landlord agreed, no order was made at that time. It appears to still be an issue and I order the landlords to comply with the *Act* by refraining from restricting the tenant's guests and deliveries.

The tenants also seek an order that the landlords comply with the *Act*, regulation or tenancy agreement respecting the stumps, television, internet, parking and storage. All of those matters are dealt with previously in this Decision except storage.

The tenant testified that the tenants used the storage space for 3 years, and the landlords used the same storage space for Christmas decorations, and would notify the tenants if the landlords wanted to retrieve items. Given that the storage space is inside the rental unit, I order that the tenants be permitted to use the storage space as they did at the beginning of the tenancy and that the landlords give appropriate notice to access the storage space.

Since the tenants have been successful with the application, the tenants are also entitled to recovery of the **\$100.00** filing fee, and I grant a monetary order in favour of the tenants in that amount.

### Conclusion

For the reasons set out above, I hereby order that the tenants be permitted to obtain their own television and internet services and I **reduce the rent by \$200.00 per month** commencing in September, 2021.

I hereby order the landlords to allow the tenants to park where they parked at the beginning of the tenancy, directly across from the front door of the rental unit, and to remove all debris from the area by August 31, 2021, failing which the tenants may apply for further compensation.

I order the landlords to remove the concrete stump or have it permanently covered by September 15, 2021, failing which the tenants will be at liberty to apply for compensation for the landlords' failure to comply with this order.

I further order the landlord to comply with the *Residential Tenancy Act* by refraining from restricting guests and deliveries.



I order that the tenants be permitted to use the storage space as they did at the beginning of the tenancy and that the landlords give appropriate notice to access the storage space.

I hereby grant a monetary order in favour of the tenants as against the landlords pursuant to Section 67 of the *Residential Tenancy Act* in the amount of **\$4,865.00** and I order that the tenants be permitted to reduce rent for future months until that sum is realized or may otherwise recover it.

This order is final and binding and may be enforced.

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