



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCT

### Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenant applied for a monetary order for compensation for damage or loss under the Act, Residential Tenancy Regulation or tenancy agreement, pursuant to section 67.

I left the teleconference connection open until 1:58 P.M. to enable the landlord to call into this teleconference hearing scheduled for 1:30 P.M. The landlord did not attend the hearing. The tenant attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the tenant and I were the only ones who had called into this teleconference.

At the outset of the hearing the attending party affirmed she understands it is prohibited to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

The tenant affirmed she met the landlord's representative CO (the landlord) in the rental unit and served the application and the evidence (the materials) in person on May 26 or 27, 2021. The tenant stated the landlord's friend named MK sent her an offensive text message on May 27, 2021 because of the application: "Stay off my property with your bullshit".

Based on the tenant's undisputed convincing testimony, I find the tenant served the materials in person on May 27, 2021, in accordance with section 89(1)(b) of the Act.

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondent.

### Issue to be Decided

Is the tenant entitled to a monetary order for compensation?

### Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending party, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenant's claim and my findings are set out below. I explained rule 7.4 to the attending party; it is the tenant's obligation to present the evidence to substantiate the application.

The tenant affirmed the tenancy started on May 01, 2015 and ended on April 30, 2021. Monthly rent was \$500.00, due on the first day of the month. The landlord purchased the rental unit on February 28, 2021.

The tenant is seeking compensation in the amount of \$200.00 because the landlord restricted the tenant's access to the backyard of the rental unit.

The tenant testified the rental unit was a single-family house and she had access to the backyard and the backyard driveway. On March 30, 2021 the landlord parked a 30 feet boat on the backyard driveway. The boat occupied the backyard driveway and half of the backyard. The tenant did not authorize the landlord to park the boat on the backyard driveway and could not use the backyard driveway and part of the backyard because of the boat.

The tenant used to park her vehicle on the backyard driveway. After March 30, 2021 the tenant parked her vehicle on the front driveway, and it was harder for her to access the rental unit. The tenant has difficulties moving because of a disability.

The tenant texted the landlord on April 6, 2021 asking her to remove the boat. The landlord did not reply. The boat remained on the backyard driveway until the end of the tenancy.

The tenant's written submission states:

April 6<sup>th</sup> I asked you if you [landlord] knew a boat took up ½ of back yard. No response back about boat.

[...]

Again you [landlord] did not address your boat [landlord] taking up ½ the back yard. 6 years ago I rented house and yard front and back. I am currently requesting \$200.00 compensation for taking up ½ the back yard.

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove the case is on the person making the claim.

Section 27 of the Act addresses the landlord's ability to terminate or restrict services of facilities:

- (1)A landlord must not terminate or restrict a service or facility if
  - (a)the service or facility is essential to the tenant's use of the rental unit as living accommodation, or
  - (b)providing the service or facility is a material term of the tenancy agreement.
- (2)A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord
  - (a)gives 30 days' written notice, in the approved form, of the termination or restriction, and
  - (b)reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

Section 1 of the Act defines that service or facility includes parking spaces and related facilities.

Section 13(2) of the Act states that all residential tenancy agreements in British Columbia should include the standard terms:

- (2)A tenancy agreement must comply with any requirements prescribed in the regulations and must set out all of the following:
  - (a)the standard terms;

The standard terms referenced in section 13(2)(a) of the Act refer to the standard terms as set out in the Schedule of the Regulation. Dealing only with the provision of utilities, section 5(2) of the Schedule to the Regulation provides as follows:

The landlord must not take away or make the tenant pay extra for a service or facility that is already included in the rent, unless a reduction is made under section 27 (2) of the Act.

Residential Tenancy Branch Policy Guideline 01 states:

1. A landlord must continue to provide a service or facility that is essential to the tenant's use of the rental unit as living accommodation.
2. If the tenant can purchase a reasonable substitute for the service or facility, a landlord may terminate or restrict a service or facility by giving 30 days' written notice, in the approved form, of the termination or restriction. **The landlord must reduce the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.**

(emphasis added)

Residential Tenancy Branch Policy Guideline 22 states:

Where there is a termination or restriction of a service or facility due to the negligence of the landlord, and the tenant suffers damage or loss as a result of the negligence, an arbitrator may also find that the tenant is eligible for compensation for the damage or loss.

Based on the tenant's convincing and undisputed testimony, I find the landlord breached section 27(2) of the Act by parking a boat on the backyard driveway from March 30 to April 30, 2021 and not reducing rent in an amount that is equivalent to the reduction in the value of the tenancy.

Section 7 of the Act states:

Liability for not complying with this Act or a tenancy agreement

(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.

Residential Tenancy Branch Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

I find the tenant suffered a loss because of the landlord's breach of section 27(2) of the Act, as the tenant could not park her vehicle on the backyard driveway. The tenant acted reasonably to minimize her losses by texting the landlord on April 06, 2021.

I find the amount of \$200.00 is not reasonable. Considering that rent was \$500.00 per month, the tenant could park her vehicle on the front driveway and use part of the backyard, I find it reasonable to award the tenant compensation in the amount of \$75.00.

### Conclusion

Pursuant to section 67 of the Act, I grant the tenant a monetary order in the amount of \$75.00.

The tenant is provided with this order in the above terms and the landlord must be served with this order. 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: November 17, 2021