



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

**Dispute Codes** CNL, LRE, OLC

### **Introduction**

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

- cancellation of the Two Month Notice to End Tenancy for Landlord's Use of Property (the "**Notice**") pursuant to section 49;
- an order that the landlord comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:20 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 11:00 a.m.

The landlord 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 landlord and I were the only ones who had called into this teleconference.

Rule 7.1 of the Rules of Procedure [the "**Rules**"] stipulates that the hearing will commence at the scheduled time unless otherwise decided by the Arbitrator. The Arbitrator may conduct the hearing in the absence of a party and may decide or dismiss the Application, with or without leave to re-apply.

Relying on *M.B.B v. Affordable Housing Charitable Association*, 2018 BSCS 2418, the landlord must still prove the grounds to end tenancy when a tenant does not appear to present their application to cancel the notice.

[27] I accept it was open to the arbitrator to proceed with the hearing or dispense with the hearing altogether and decide the matter in the absence of M.B.B., but in doing so, the arbitrator still had to resolve the issue raised by the application on the merits in some way. It was insufficient to dismiss the application solely on the grounds that M.B.B.

had not dialed in to the hearing within the first ten minutes as she was supposed to have done.

I decided the hearing would proceed in the absence of the tenant.

The landlord testified that the tenant never served him with the Notice of Dispute or any evidence the tenant would rely on at this hearing. The landlord was made aware of the hearing coincidentally when he contacted the Residential Tenancy Branch (the “RTB”) on a separate tenant-landlord matter and was advised of the hearing.

Based on the affirmed testimony of the landlord, and in accordance with sections 89 and 90 of the Act, I find that:

- 1) the landlord was not properly served with the notice of dispute resolution package which pertain to the tenant’s application for cancellation of the Two Month Notice; an order the landlord comply with the Act; an order to suspend or set conditions on the landlord’s right to enter the rental unit.

Accordingly, I dismiss the tenant’s claim in its entirety, without leave to reapply.

I note s. 55 of the Act requires that when a tenant applies for dispute resolution seeking to cancel a notice to end tenancy issued by a landlord, I must consider if the landlord is entitled to an order of possession, and/ or a monetary order if the application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the Act.

At the outset, I advised the landlord of rule 6.11 of the Rules of Procedure (the “Rules”), which prohibits participants from recording the hearing. The landlord confirmed that he was not recording the hearing. I also advised the landlord that pursuant to Rule 7.4, I would only consider written or documentary evidence that was directed to me in this hearing.

### **Preliminary Issue: Address Clarification**

The address submitted by the tenant to the RTB was incomplete. The landlord provided the complete and correct address, and that amendment has been reflected on the cover sheet.

### **Issues to be Decided**

Is the landlord entitled to:

- 1) retain the security deposit in satisfaction of damage to the rental unit?

## **Background and Evidence**

While I have considered the documentary evidence and the testimony of the landlord not all details of his submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The parties entered into an oral month-to-month tenancy agreement starting seven (7) years ago. Monthly rent was and remained at \$600.00 per month and payable on the first of each month. The tenant paid the landlord a security deposit of \$300.00. The landlord still retains this deposit. Cable, utilities, and internet was included in the rent. The only additional charge was a \$20.00 cost associated with a PVR the tenant requested, an added cost to the landlord's monthly cable bill. The \$20.00 charge was mutually agreed to by the landlord and the tenant.

The landlord testified that the when the tenant first moved into the basement suite, the landlord's family was a family of seven (7). Since that time, his children have grown up and are in relationships and in school, so the family has increased in size. One of his daughters is going to nursing school and she asked her dad if she could move into the downstairs unit. It was difficult trying to study and sharing a bathroom with her older sister. The father agreed and so the tenant was served the Two-Month Notice.

The tenant did not upload a copy of the Two-Month Notice with his application or thereafter as required under rule 2.5 of the Rules of Procedure (the "**Rules**"). The landlord stated that the Notice was issued at the end of August and the "must leave date" was October 31, 2021.

Prior to serving the Notice, the landlord had no trouble with the tenant. After the Notice was served, the tenant became belligerent and abusive toward the family. He "went on profanity laced tirades", started yelling and screaming at various times throughout the day and night, blasted his music in the middle of the night waking up the household, and making rude gestures at the security system. The tenant also believed that the security system was installed to watch him specifically, despite the landlord telling the tenant that the basement suite was "blanked out" and that he could come up and view the videos. The landlord told his family to "just ignore" the tenant because he was looking for an argument and there was no point in engaging.

On September 22, 2021, the landlord called the RTB to discuss the devolving tenant-landlord relationship and ask for guidance about what he could do. It was during that conversation the landlord was advised that the tenant had filed a Dispute Resolution Application. He was provided the date of the hearing and told that the tenant was required to serve the landlord Notice of the Dispute Resolution by September 23, 2021. The landlord did not receive the Notice or any evidence upon which the tenant may rely upon at the time of the hearing.

The landlord testified that the tenant abandoned the rental unit on or about October 1, 2021. On October 1, 2021, the landlord's wife noticed a U-Haul pulled up to the property and the tenant moving his belongings into the truck. The tenant did not give the landlord notice, did not return the keys, did not leave a forwarding address, and would not respond to text messages or phone calls.

The landlord again contacted the RTB and was advised not to enter the basement suite in case the tenant planned to come back and had personal belongings still in the residence. They told the landlord to wait until October 31, 2021, and then post a notice to the door advising the landlord would be entering the unit. On November 1, 2021, the landlord posted the Notice on the door and entered the suite on November 5.

The RTB also advised the landlord to serve his evidence and request for a final inspection to the tenant by registered mail in case the tenant left a forwarding address with Canada Post. The landlord did so but the letter was delivered to the landlord's address. The landlord referred me to his submitted photo of the registered letter receipt and the letter delivered to his home address.

The landlord stated that the basement suite door was unlocked, the keys were on the counter. The suite had not been cleaned and there was garbage including food scraps left in the unit, the fridge and stove had not been cleaned, there were about 200 holes in the walls, the bedroom windowsill was broken and looked like someone had stepped on it. There was food spatter on the walls that required an industrial strength degreaser to remove. The landlord submitted pictures of the state of the basement suite. The landlord stated that it took over one month to remove garbage, clean the unit, make various repairs, and paint to make the suite habitable for his daughter. His daughter moved into the basement suite on December 15, 2021, after the repairs were completed.

The landlord states that given all of the repairs and the mess the tenant left behind; he feels he should not have to return the damage deposit.

### **Analysis**

Sections 35 of the *Act* sets out the obligations of the parties regarding a move out report.

#### **Condition Inspection: end of tenancy**

- 35** (1) The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit

- (a) on or after the day the tenant ceases to occupy the rental unit, or
- (b) on another mutually agreed day.
- (2) The landlord must offer the tenant at least 2 opportunities as prescribed, for the inspection.
- (3) The landlord must complete a condition inspection report in accordance with the regulations.
- (4) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.
- (5) The landlord may make the inspection and complete and sign the report without the tenant if
  - (a) the landlord has complied with subsection (2) and the tenant does not participate on either occasion, or
  - (b) the tenant has abandoned the rental unit.

The landlord testified and provided evidence that he attempted to contact the tenant by text and by registered mail. The landlord also testified that he tried contacting the tenant by phone. The tenant did not respond to phone calls or texts. The tenant left no forwarding address at the Post Office. Further, the tenant abandoned the residence on October 1, 2021, without giving the landlord notice.

The landlord made several attempts to contact the tenant. The landlord wanted confirmation of the tenancy status, asked the tenant to remove any belongings left on site, clean the basement unit, and complete the final inspection. The tenant did not respond to the landlord. Based on the affirmed and undisputed testimony of the landlord, I find that the landlord made several attempts to contact the tenant to complete the end of tenancy requirements and the tenant did not respond. The inspection and photos of the suite submitted into evidence by the landlord meet the requirements set out in s. 35 of the *Act*.

Section 37(2) of the *Act* states:

**Leaving the rental unit at the end of a tenancy**

- 37 (2)** When a tenant vacates a rental unit, the tenant must
- (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Residential Tenancy Branch Policy Guideline 1 states:

The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with the standard. The tenant is also generally required

to pay for repairs where damages are caused either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises) to a higher standard than that set out in the *Residential Tenancy Act*.

Section 32 (3) of the *Act* states: “A tenant of a rental unit must repair damage to the rental unit or common area that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.”

Residential Tenancy Branch Policy Guideline 1 states:

Reasonable wear and tear refer to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs of maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant.

I find the landlord’s testimony throughout the hearing was consistent and forthright, and I found him to be a credible witness. In determining that the landlord’s photographs accurately reflect the condition of the rental unit, I was further influenced by the undisputed evidence that many of the photographs submitted in evidence by the landlord were of the rental unit. In my view, the photographs taken at close range are consistent with the landlord’s description of the state of the abandoned rental unit.

Section 37(2) of the *Act* requires a tenant to leave a rental unit in reasonably clean condition. I find that the photographs submitted in evidence by the landlord. Based on the landlord’s undisputed convincing testimony, I find the tenant breached s. 37(2) of the *Act* by failing to clean the rental unit when the tenancy ended.

I find that the photographs of the walls and windowsill submitted in evidence by the Landlord accurately reflect the condition of the walls at the end of the tenancy. Based on the landlord’s testimony and the photographs submitted into evidence, I find the tenant similarly breached section 32(3) of the *Act* by failing to repair the bedroom windowsill and patch the multiple holes in the walls.

I award the landlord damages in the amount of \$300.00. Pursuant to section 72(2) of the *Act*, the landlord may retain the security deposit in satisfaction of the monetary orders made above.

## **Conclusion**

The tenant’s application is dismissed in its entirety.

Pursuant to sections 62, 65, 67, and 72 of the Act, I award the landlord \$300.00. The landlord retain the \$300.00 security deposit in satisfaction of the award for damages.

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 20, 2022

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Residential Tenancy Branch