



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, MNDCT, CNR, LRE, OLC

### Introduction

The Tenant seeks the following relief under the *Residential Tenancy Act* (the “Act”):

- An order under s. 47 to cancel a One-Month Notice to End Tenancy;
- An order under s. 46 to cancel a 10-Day Notice to End Tenancy;
- An order pursuant to s. 67 for monetary compensation for damages;
- An order under s. 70 to restrict the Landlord’s right of entry; and
- An order under s. 62 that the Landlord comply with the *Act*, Regulations, and/or tenancy agreement.

K.W. appeared on her own behalf as the Tenant. K.W., who is hearing impaired, was assisted by an interpreter.

The Landlord did not attend the hearing, nor did someone attend on their behalf. Pursuant to rule 7.1 of the Rules of Procedure, the hearing began as scheduled in the Notice of Dispute Resolution. As the Landlord failed to attend the hearing, the hearing was conducted without their participation as contemplated by Rule 7.3 of the Rules of Procedure.

The Tenant affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The Tenant confirmed that they were not recording the hearing.

The Tenant advised that she attempted to personally serve the Landlord with the Notice of Dispute Resolution and her evidence on December 23, 2021. The Tenant says that the Landlord refused to accept service of the Notice of Dispute Resolution and evidence. The Tenant states that she left the application materials at the door of the Landlord on December 23, 2021 and followed-up with an email sent to the Landlord on

the same date with the application materials. Policy Guideline 12 makes clear that if a person to be served refuses to accept the document, it may be left near to the person so long as they are informed of the nature of the document. I find that the Tenant served the Notice of Dispute Resolution and evidence in accordance with s. 89 of the *Act* on December 23, 2021 by leaving the materials at the Landlord's door after they refused to accept the documents. I further find that pursuant to s. 72(1) of the *Act* the Landlord was sufficiently served with the application materials when the Tenant served provided a follow-up email with the application materials on December 23, 2021.

#### Preliminary Issue – Tenant's Claim

The Tenant advised that she vacated the rental unit on December 21, 2021. Given this, much of the Tenant's application is no longer relevant as the tenancy is over. I hereby dismiss the Tenant's claims under sections 46 (cancel a 10-Day Notice), 47 (cancel a One-Month Notice), 62 (order that the Landlord comply), and 70 (order restricting the Landlord's right of entry) on the basis that these issues are no longer relevant as the tenancy is over.

The sole issue to be determined was the Tenant's monetary claim for compensation.

#### Issue(s) to be Decided

- 1) Is the Tenant entitled to a monetary order for compensation? If so, in what amount?

#### Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issue in dispute will be referenced in this decision.

The Tenant advised that she began to occupy the rental unit on December 2, 2021. The Tenant confirmed that rent was to be paid in the amount of \$1,800.00 on the first day of each month and that she gave a security deposit of \$900.00 to the Landlord. The rental unit is a basement suite in a single detached home and the Tenant advised that the Landlord lives on the main floor.

The Tenant provided an unsigned copy of the tenancy agreement. The tenancy agreement provided is in the standard form provided by the Residential Tenancy Branch except for a handwritten addendum. The Tenant says that she met with the Landlord on December 3, 2021 to sign the tenancy agreement but refused to do so on the basis that the terms in the handwritten addendum were, in the Tenant's view, illegal. The Tenant says there was no discussion of terms with the addendum prior to moving into the rental unit and took particular issue with a request that the Tenant notify the Landlord when they would be coming and going from the rental unit.

The Tenant says that the Landlord discriminated against her and her family. She says that she and her husband are hearing impaired, and her two younger children are hard of hearing. She says that after refusing to sign the tenancy agreement, the Landlord would insist on being notified when the Tenant and her family was entering and leaving the rental unit. The Tenant says that the Landlord told one of her children that the Landlord could treat the Tenant differently as she was hearing impaired. The Tenant described being harassed by the Landlord and was fearful of her interactions with the Landlord. The stress and antagonism caused the Tenant to look for another rental shortly after moving into the rental unit. The Tenant says that when she and her family moved out on December 21, 2021, the Landlord was insulting her, which had been heard by her children.

In the Tenant's application she seeks monetary compensation in the amount of \$2,500.00. However, in the Tenant's evidence, there is handwritten note with respect to the Tenant's monetary claim, which details the following:

\$900.00	Return of security deposit
\$450.00	Return of rent payment
\$500.00	Compensation for moving rental
\$2,000.00	Compensation for emotional distress and discrimination from the Landlord.

At the hearing, the Tenant advised that she made a payment of \$450.00 for rent on December 6, 2021 but otherwise made no payments to the Landlord for rent in December 2021. The Tenant seeks the return of the \$450.00 rent payment.

She further stated that the security deposit of \$900.00 has not been returned by the Landlord. The Tenant advised no move-in inspection report was completed when moving into the rental unit. The Tenant further advised that she did not provide her

forwarding address upon moving out on the basis that she is afraid to provide her forwarding information to the Landlord given the harassment she alleges to have occurred.

The Tenant further describes that she seeks return of her moving rental costs for moving in and moving out of the rental unit. No receipts were provided by the Tenant though she says that the cost of the rental truck for the move-in and move-out totalled approximately \$500.00.

Finally, the Tenant is seeking general compensation for the distress and discrimination she says her and her family dealt with at the hands of the Landlord. She describes that her eldest child, who lives independently, moved into the rental unit with the Tenant to ensure that the Landlord left the Tenant and other occupants alone.

### Analysis

Despite there being no signed tenancy agreement, I find that there is, in fact, a tenancy. The Tenant took exclusive occupancy of the rental unit and had an agreement with the Landlord that rent was to be paid in the amount of \$1,800.00 on the first day of each month. The Tenant paid a security deposit of \$900.00 to the Landlord, which the Landlord still holds. I find that there was an oral agreement between the parties respecting the tenancy and that the finalized terms of the tenancy agreement, in particular the addendum, were not expressly agreed to beforehand and do not comprise a part of the parties' agreement.

The Tenant seeks monetary compensation following her brief tenancy with the Landlord. Under s. 67 of the *Act*, the Director may order that a party compensate the other if damage or loss result from that party's failure to comply with the *Act*, the regulations, or the tenancy agreement. Policy Guideline #16 sets out that to establish a monetary claim, the arbitrator must determine whether:

1. A party to the tenancy agreement has failed to comply with the *Act*, the regulations, or the tenancy agreement.
2. Loss or damage has resulted from this non-compliance.
3. The party who suffered the damage or loss can prove the amount of or value of the damage or loss.
4. The party who suffered the damage or loss mitigated their damages.

The applicant seeking a monetary award bears the burden of proving their claim on a balance of probabilities.

I appreciate that the Tenant is claiming discrimination on the part of her and her family's hearing impairments. However, the *Act* does not protect against discrimination. Such claims would be made under the *BC Humans Right Code* and the complaints addressed by the BC Human Rights Tribunal. I do not have jurisdiction to make any determination on a claim of discrimination and accordingly decline to do so under the present circumstances.

The Tenant claims for return of their security deposit of \$900.00. I would note that the Tenant's application did not strictly seek that order, which would be under s. 38 rather than the claim as s. 67. Be that as it may, the Tenant did describe they were seeking that as listed in the Notice of Dispute Resolution. The issue with the Tenant's claim is that their right to the return of their security deposit is triggered when they provide the Landlord with their forwarding address in writing as contemplated by s. 38(1) of the *Act*. The Tenant admits that she has not provided the Landlord with her forwarding address. Accordingly, the Tenant's right to return of the security deposit has not yet been triggered and this portion of their claim is dismissed. I dismiss this portion of the Tenant's claim with leave to reapply.

The Tenant's second claim relates to the return of their rent payment of \$450.00. Section 26 of the *Act* imposes a clear obligation on the Tenant to pay rent in full when it is due regardless of whether the Landlord complies with the *Act*, regulations, or the tenancy agreement. I appreciate the Tenant's claim of harassment. However, this do not justify the return of rent paid as required by the tenancy agreement and in compliance with the obligation imposed by s. 26. Rent can only be deducted as permitted under the *Act* and none of the permitted exceptions are applicable here (see sections 19, 33, 43, 65, and 72). Accordingly, the Tenant's claim for return of their partial rent payment is dismissed without leave to reapply.

The balance of the Tenant's claim relate to alleged harassment by the Landlord. Essentially, the Tenant is arguing that the Landlord unreasonably disturbed her right to the quiet enjoyment of the rental unit as protected by s. 28 of the *Act*. I accept the Tenant's undisputed evidence that the Landlord insisted on knowing when the Tenant was coming and going from the rental unit. I find that the Landlord's insistence on knowing when the Tenant was coming and going from the rental unit is a breach of her

right to reasonable privacy and a breach of her freedom from unreasonable disturbance as protected by s. 28 of the *Act*.

The Tenant claims a general amount of \$2,000.00 for emotional and mental distress related to the Landlord's conduct. The Tenant was unable to provide specific detail on how this number was obtained and essentially argued that it was a general claim. I find that the Tenant has suffered damages as a result of the Landlord's breach of s. 28 of the *Act* and accept that the Tenant has suffered from distress from the events related to this tenancy. However, the Tenant was unable to prove on balance there was a quantifiable loss related the Landlord's breach. Given that the Tenant has not proven any specific amount for this claim, I find that nominal damages are warranted. Policy Guideline 16 provides guidance indicating that nominal damages may be awarded where a legal right has been breached but no significant loss has been proven. Under the circumstances, I find that \$500.00 is an appropriate amount for nominal damages given the events that occurred.

The Tenant further claims \$500.00 for the cost of their moving truck. However, the Tenant has failed to provide receipts for this claim and has provided an approximate amount. Without sufficient specificity, I find that the Tenant has failed to quantify their loss nor has the Tenant established a causal link between how the moving truck cost is linked to the Landlord's breach of s. 26, in particular the cost of moving into the rental unit. Accordingly, this aspect of the Tenant's claim is also dismissed without leave to reapply.

### Conclusion

The Tenant has established that the Landlord has breached their right to the quiet enjoyment of the residential property and that she suffered damages as a result. The Tenant was unable to quantify this amount, however, I find that circumstances warrant an award of nominal damages recognizing the breach of the Tenant's rights. I grant a nominal award of \$500.00 to the Tenant for breach of her right to quiet enjoyment.

All other aspects of the Tenant's claim for compensation are dismissed. The Tenant has not provided a forwarding address and her right to the return of her security deposit has not yet been triggered. The Tenant's claim for return of the security deposit is dismissed with leave to reapply. The other aspects of the monetary claim are either outside my jurisdiction or are not made out and are dismissed without leave to reapply.

Accordingly, I order pursuant to s. 67 of the *Act* that the Landlord pay **\$500.00** to the Tenant in nominal damages related to the breach of the Tenant's right to quiet enjoyment.

It is the Tenant's obligation to serve this order on the Landlord. If the Landlord does not comply with the monetary portion of this order, it may be filed with 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: January 14, 2022

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Residential Tenancy Branch