



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      **MNDCT, MNETC, FFT**

### **Introduction**

1. An Order for compensation for a monetary loss or other money owed pursuant to Section 67 of the Act;
2. An Order for compensation from the Landlord related to a Notice to End Tenancy for Landlord's Use of Property pursuant to Section 51(1) of the Act; and,
3. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Tenant attended the hearing at the appointed date and time and provided affirmed testimony. The Landlord did not attend the hearing. 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. The Tenant was given a full opportunity to be heard, to make submissions, and to call witnesses.

I advised the Tenant that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. The Tenant testified that she was not recording this dispute resolution hearing.

The Tenant testified that she served the Landlord with the Notice of Dispute Resolution Proceeding package, after doing a property search for the Landlord, for this hearing on January 16, 2022 by Canada Post registered mail (the "NoDRP package"). The Tenant referred me to the Canada Post tracking number as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. I find that the Landlord was deemed served with the NoDRP package five days after mailing them, on January 21, 2022, in accordance with Sections 89(1)(c) and 90(a) of the Act.

### Issues to be Decided

1. Is the Tenant entitled to an Order for compensation for a monetary loss or other money owed?
2. Is the Tenant entitled to an Order for compensation from the Landlord related to a Notice to End Tenancy for Landlord's Use of Property?
3. Is the Tenant entitled to recovery of the application filing fee?

### Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The Tenant confirmed that this periodic tenancy began on September 1, 2020. Monthly rent was \$1,650.00 payable on the first day of each month. A security deposit of \$825.00 was collected at the start of the tenancy and was returned by the Landlord at the end of the tenancy.

The Tenant testified that the Landlord personally served a Two Month Notice to End Tenancy for Landlord's Use of Property on the Tenant on June 21, 2021 (the "Two Month Notice"). The reason to end tenancy noted on the Landlord's Two Month Notice was that all of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.

The Tenant stated she provided the Landlord with a 10 Day Notice to Move Out Early on July 19, 2021. The uploaded letter advised that the Tenant's last day of her tenancy would be July 31, 2021, and the Tenant also provided her forwarding address.

The Landlord informed the Tenant with a detailed note that he wanted to stage the Tenant's rental unit getting it ready for sale. The Tenant, although very neat, she said she had a lot of things that she would have to get organized. She said the Landlord was very pushy with her to get the rental unit ready. Because of COVID-19, the Tenant worked from home, and the pressure from the Landlord to get her space ready for viewing was interfering with her work. This disruption occurred in the months of May, June and July 2021. The Tenant asked the Landlord if the suite could be shown virtually

instead of every person who was slightly interested walking through the Tenant's home. The Landlord did not welcome this suggestion.

The Tenant said the real estate person was very professional and told the Tenant that they did not need pictures because they already had pictures of the rental unit. The Tenant was worried about COVID-19, as the rules were very strict then. The Tenant also had some surgery, so she was worried about possibly being in contact with people who had COVID-19. The Tenant said that the Landlord became very difficult to work with.

The Tenant shared that the Landlord started doing things in the home without giving the Tenant any notice. She said one day the Landlord started working on the wiring in the walls, it was noisy, disturbing her work, and whatever he was doing it was making the internet go on and off. Internet was included in the tenancy agreement. She got cut-off on a work conference call.

After the Tenant gave the Landlord her 10 Day Notice to Move Out Early, she felt he was annoyed, and he started deleting her recordings on the PVR on a daily basis. Cablevision was included in the tenancy agreement and the Tenant did not like that the Landlord was being disruptive. The Tenant did not approach the Landlord on these happenings.

After the Landlord sold the house, the Tenant testified that he had two parties, one on July 17, and the second party one week after that date. These parties went into the early hours of the morning above her rental unit and out into the street.

The Tenant became very uncomfortable around the Landlord. She said he is six feet four inches and very intimidating. The Tenant testified that they have mutual friends and the Landlord made small talk with her about seeing some of these mutual friends, but the Tenant found these conversations disturbing. At the end of the tenancy, the Tenant maintained that the Landlord became vindictive, deliberate and willful. The Tenant stated that the Landlord harassed her and threatened her in a telephone call, and she hung up on him. The Tenant stated that the Landlord told her she has mental issues, called her a moron, told her "*there's something wrong with her*", and to leave him alone. She said after that she only communicated with him over email or text.

The Tenant said at the beginning of the tenancy, after completing the move-in condition inspection, the Landlord did not send her the copy of the signed report. The Tenant

stated that the Landlord did the move-out condition inspection on his own. The Tenant was late completing her cleaning of the rental unit, and the Landlord showed the Tenant that he knew she was in the rental unit after 1 p.m. on the last day of the tenancy. The Tenant said the Landlord considered that she had broken into the rental unit. The Tenant asked him if she could get her son to return the rental unit keys to him, and the Landlord told her “*no, if you come here, I’ll call the police.*” The Landlord demanded that she return the rental unit keys to him by registered mail.

The Tenant testified that she agreed that the Landlord could take a day’s rent off the compensation the Landlord owed her because she was in the rental unit one day after the end of the tenancy. The Tenant stated that the Landlord signed the Canada Post registered mail package for the return of the keys on August 17, 2021. The Tenant said she waited and waited for her one month’s compensation less the one day’s rent from the Landlord, but it never came.

On August 24, 2021, the Tenant received a letter with her void cheque for August’s rent which the Landlord had returned to her. The Tenant still did not receive the one month’s rent payable for the Tenant’s compensation after receiving the Two Month Notice. The Tenant sent the Landlord text and email requests for her one month’s compensation, but the Landlord did not reply. The Tenant argued that it was clear to her that the Landlord made a plan to leave town and not inform her where she could find him. The Tenant knew the Landlord moved up to another city, and she incurred costs from the Land Title and Survey Authority of British Columbia (the “LTSA”) to find the Landlord’s new address.

The Tenant said she felt powerless against this man. She said, “*it’s like you have to suck up to somebody because they’ve got your money.*” She said he was hurtful and insulted her dignity.

The Tenant seeks:

ITEM	AMOUNT
One month rent compensation due (minus one day rent for late move out)	\$1,595.75
Registered mail fee for return of house keys	\$11.00
Application filing fee	\$100.00
LTSA fee	\$93.67
Registered mail document service fees (estimated)	\$50.00
Loss of quiet enjoyment and interference with included services of tenancy	\$1,000.00
Aggravated Damages (including psychological distress)	\$2,000.00

### 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 their case is on the person making the claim.

### ***Liability for not complying with this Act or a tenancy agreement***

- 7** (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.*

### ***Tenant's compensation: section 49 notice***

- 51** (1) *A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.*

The Tenant received a Section 49 Two Month Notice from the Landlord on June 21, 2021. The Landlord did not provide the Tenant with her compensation which she is entitled to pursuant to Section 51(1) of the Act. I find the Landlord owes the Tenant one month's rent payable as compensation for the Landlord's issuance of the Two Month Notice. The Tenant agreed to pay the Landlord one day's rent because she was not completely out of the rental unit on the last day of tenancy. The parties agreed to an amount of **\$1,595.75** and the Landlord owes this to the Tenant.

RTB Policy Guideline #16-Compensation for Damage or Loss addresses the criteria for awarding compensation to an affected party. This guideline 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.*" This section must be read in conjunction with Section 67 of the Act.

Policy Guideline #16 states 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.

Section 37(2)(b) of the Act states that a Tenant must give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property. The Tenant made best effort suggestions to the Landlord for the return of the rental unit keys, but the Landlord demanded that the Tenant was to return the keys by registered mail. The Landlord told the Tenant if she sent her son to return the keys, he would call the police. The Tenant returned the Landlord's keys to him by registered mail for which he signed on their receipt on August 17, 2021. I find the Tenant is entitled to **\$11.00** compensation for the registered mail package for the return of the rental unit keys.

The Tenant applied for approval for substitution service to send the application package to the Landlord by email. That application was not granted, so the Tenant had to find a

way to find the location of the Landlord. The Tenant did a Land Title search, and found the Landlord's title and new address using that service. I find the Tenant is entitled to reimbursement for the **\$93.67** expense she incurred in her search for the Landlord's new address.

I deny the registered mail compensation the Tenant incurred to serve the Landlord her application documents.

RTB Policy Guideline #6 assists parties to understand issues that are likely to be relevant in a breach of quiet enjoyment claim. The basis for a finding of a breach of quiet enjoyment is set out in the guideline as:

*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 whether a breach of quiet enjoyment has occurred, it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises.*

*A landlord can be held responsible for the actions of other tenants if it can be established that the landlord was aware of a problem and failed to take reasonable steps to correct it.*

I find the Landlord's conduct while he was in the transition of selling his home to be substantially disruptive to the Tenant. She worked from home because of COVID-19, and his actions in disrupting her workdays seemed deliberate. The Landlord also interfered with services that were included in the tenancy agreement. I find the Tenant is entitled to **\$350.00** compensation for the breach of freedom from unreasonable disturbances.

I decline to award aggravated damages to the Tenant in this matter.

As the Tenant is successful in her claim, she is entitled to recovery of the application filing fee. The Tenant's total monetary award is as follows:

Monetary Award

ITEM	AMOUNT
One month rent compensation due (minus one day rent for late move out)	\$1,595.75
Registered mail fee for return of house keys	\$11.00
LTSA fee	\$93.67
Loss of quiet enjoyment and interference with included services of tenancy	\$350.00
Application filing fee	\$100.00
<b>TOTAL MONETARY AWARD:</b>	<b>\$2,150.42</b>

Conclusion

I grant a Monetary Order to the Tenant in the amount of \$2,150.42. 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 of British Columbia 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 Act.

Dated: August 22, 2022

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Residential Tenancy Branch