



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **CNC, MNDCT, LRE, LAT, OLC, FFT**

### Introduction

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

1. Cancellation of the Landlord's One Month Notice to End Tenancy for Cause (the "One Month Notice") pursuant to Section 47 of the Act;
2. An Order for compensation for a monetary loss or other money owed pursuant to Section 67 of the Act;
3. An Order to suspend or set conditions on the Landlord's right to enter the rental unit pursuant to Section 70 of the Act;
4. An Order for authorization to change the locks to the rental unit pursuant to Section 70 of the Act;
5. An Order for the Landlord to comply with the Act, regulations, and tenancy agreement pursuant to Section 62(3) of the Act; and,
6. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlords and one Tenant attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

Both parties acknowledged receipt of:

- the Tenants' Notice of Dispute Resolution Proceeding package and evidence served by registered mail on June 17, 2022, Canada Post Tracking Number is noted on the cover sheet of this Decision, the Landlords are deemed served on June 22, 2022 (see Preliminary Matters for digital evidence);
- the Landlords' evidence package served by priority mail on October 7, 2022, Priority Post Tracking Number is noted on the cover sheet of this Decision, the Tenant is deemed served on October 12, 2022;
- the Tenant's Interim evidence served by registered mail on November 14, 2022, Canada Post Tracking Number is noted on the cover sheet of this Decision, the Landlords are deemed served on November 19, 2022; and,
- the Landlords' Interim evidence served by registered mail on November 28, 2022, Canada Post Tracking Number is noted on the cover sheet of this Decision, the Tenant is deemed served on December 3, 2022.

Pursuant to Sections 88, 89 and 90 of the Act, I find that both parties were duly served with all the documents related to the hearing in accordance with the Act.

### Preliminary Matters

#### *Unrelated Claims*

Prior to the parties' testifying, I advised them that RTB Rules of Procedure 2.3 authorizes me to dismiss unrelated claims contained in a single application. The Tenant indicated that he vacated the premises on June 30, 2022. As the tenancy has ended, I dismiss all of the Tenant's claims related to the possession of the unit without leave to re-apply. I find the only relevant claims in this matter is the Tenant's claim for compensation for a monetary loss or other money owed, and the claim for recovery of the application filing fee.

#### *Digital Evidence*

RTB Rules of Procedure 3.10.1 and 3.10.4 state:

**3.10.1 Description and labelling of digital evidence:** To ensure a fair, efficient and effective process, where a party submits digital evidence, identical digital evidence and an accompanying description must be submitted through the Online Application for Dispute Resolution or Dispute Access Site, directly to the

Residential Tenancy Branch or through a Service BC Office, and be served on each respondent [party].

A party submitting digital evidence must:

- include with the digital evidence:
  - a description of the evidence;
  - identification of photographs, such as a logical number system and description;
  - a description of the contents of each digital file;
  - a time code for the key point in each audio or video recording; and
  - a statement as to the significance of each digital file;
- submit the digital evidence through the Online Application for Dispute Resolution system under 3.10.2, or directly to the Residential Tenancy Branch or a Service BC Office under 3.10.3; and
- serve the digital evidence on each respondent [party] in accordance with 3.10.4.

**3.10.4 Digital evidence served to other parties:** Parties who serve digital evidence on other parties must provide the information required under Rule 3.10.1 using Digital Evidence Details (form #RTB-43).

Parties who serve digital evidence to the Residential Tenancy Branch and paper evidence to other parties must provide the same documents and photographs, identified in the same manner in accordance with Rule 3.7.

The Tenant has not provided the key time points in the videos that he uploaded into his evidence. This is a requirement for digital evidence. The videos are named “LandlordConfrontsTenant”. I decline to view these pieces of digital evidence because of the lack of clarity of what they show and specifically the timepoints that are key.

#### 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 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 testified that he lived in the rental unit prior to the current Landlords' purchase. The parties confirmed that their periodic tenancy began on June 1, 2021, while the Landlord took ownership on June 5, 2021. Monthly rent was \$1,350.00 payable on the first day of each month. A security deposit of \$675.00 was collected at the start of the tenancy. The Tenant vacated the rental unit on June 30, 2022 and the security deposit was returned to him in July after the tenancy ended.

The Tenant initially sought \$16,200.00 for the loss of quiet enjoyment of the rental unit due to the nature of the Landlords' dog who lives in the upper unit of the residential property. After the hearing, the parties were asked for evidence to determine the quantum value of the Tenant's loss of quiet enjoyment of his rental unit. He submitted:

Month	Monetary Loss per day of enjoyment	Number of days calculated	Total amount of loss
June 2021	\$10	24	\$240
July 2021	\$10	31	\$310
August 2021	\$10	31	\$310
Sept. 2021	\$10	30	\$300
October 2021	\$10	31	\$310
Nov. 2021	\$10	30	\$300
Dec.	\$10	31	\$310
Jan. 2022	\$10	31	\$310
Feb. 2022	\$10	28	\$280
Mar. 2022	\$10	31	\$310
Apr. 1-11 <sup>th</sup>	\$10	10	\$100
Apr. 12 <sup>th</sup> -30 <sup>th</sup>	\$20	18	\$360
May 2022	Full rent	31	\$1350
June 2022	Full rent	30	\$1350
		<b>Subtotal:</b>	<b>\$6140</b>
June 2022	MOVERS		\$873.13
	Moving Materials		\$200
	Filing fee RTB		\$100
		Sub for moving costs:	\$1173.13
		<b>Grand total:</b>	<b>\$7313.13</b>

The Tenant submitted that his issues with the Landlords' dog began within days of the Landlords moving in. He described that the dog would charge, snarl, lunge, and spray spit on him and whoever else was coming and going into or from his home. The Tenant said the dog would stalk open windows, and snarl and spit at his children, at his partner's children and at the two of them. The Tenant stated he could not use his patio to sit at, eat meals on or have coffee outside, without the dog spraying him with saliva and aggressively intimidating him by growling. The Tenant said he messaged the Landlords about this issue on multiple occasions, but he said the Landlords did not secure the yard and gate system to keep the dog contained.

Some text message exchanges between the Landlords and the Tenant -  
June 25, 2021:

*L: ... I was also checking to see what u guys think about this idea- if I place a bag of dog treats out there by the fence and u guys just threw some over to [dog] each time u enter maybe that would decrease the aggressivness? let me know u think*

August 1, 2021:

*L: Hi [Tenant], we left a bag of treats out there for you guys 😊*

*T: ... I did not see the dog treats when we came home about 30 minutes ago. To be honest...we are beginning to have difficulties with [dog] aggressiveness.*

*I know he is probably fine to the family that has him as a pet....but he is getting hostile. [Female] got sprayed in the face with foam and spit as she came down the stairs and he wa hovering above her on the patio. I can no longer sit at my patio table below to have coffee as he is constantly stalking the perimeter. ... The other night again he stood at my kitchen window growling and foaming. ... There is also the matter of the constant barking.*

*L: ... for now what we will do is [dog] will stay inside his gated area and it will be locked so he will not have access to come towards your side. ...*

On April 12, 2022, the Landlord was standing in his driveway with the leashed dog. The Tenant was leaving his rental unit, walking down the driveway when he stopped to talk to the Landlord. He went over to the dog with his arm and hand slightly extended, and the dog bit him on his arm. The Tenant was treated at the hospital, he reported a three-inch bite mark on his arm, and hospital report findings follow:

*There is probable soft tissue swelling over the ulnar aspect of the right forearm. Mild irregularity over the skin and suspected diffuse skin thickening. No acute bony injury identified. No radiopaque foreign body is seen. No significant gas seen within the soft tissue.*

On April 13, 2022, the Tenant reported the incident to animal control. The description of the event to animal control said:

*... He reported that the alleged offending dog owner was coming back to the property from [park] and the requestor called out to the alleged offending dog owner through the fence as he knows the alleged offending dog has aggressive tendencies. He reported that the alleged offending dog owner moved to behind the vehicles on the driveway so Requestor could safely pass. He reported that as they were walking the alleged offending dog lunged and pulled towards them, biting onto the requestor's arm. Requestor reported that the dog shook his arm violently while the dog owner stood there 'dazed.' He informed that he managed to get free from the alleged offending dog and yelled at the dog owner to "do something" and the dog owner responded that her [sic] did not know what to do.*

On one phone call with animal control, the bylaw office noted that they could hear the dog's frantic barking over the telephone conversation. On May 3, 2022, the Landlords' dog was designated as an aggressive dog under the bylaw. A package was left on the Landlords' door, and the bylaw office spoke to the Landlords on May 5, 2022 as the Landlords were out of town. They planned to meet in person on the following Monday to go over all the details, ability to appeal, and other requirements. The bylaw report notes that specific containment requirements would apply to the dog when situated outside, and when outside and not contained, he must be leashed and muzzled.

From the AC report, the Tenant called the bylaw office often to make inquiries or report that the Landlords were not following the designation restrictions. He was still cautious and anxious. On May 17, 2022, the bylaw office stated the investigation was complete, the dog was designated aggressive, and the office was waiting for an appeal. The file was closed.

The Tenant stated he battled insomnia and anxiety after the bite from the dog. He went on medication for these ailments. He said the Landlords called him a liar and that he

had exaggerated his injuries. He said the Landlords' loud music kept him awake at hours past 11 p.m. He wrote that his stepdaughters no longer visited as they were afraid of the dog. The Tenant stated the dog escaped from the Landlords' home on May 27, 2022. The Tenant feared that the Landlords would allow their dog to escape again and potentially cause harm to him or other occupants in his home. In June 2022, the Tenant packed and moved out of the rental unit at the end of the month.

The Landlords gave evidence that they have two rental units in the lower floor of their residence. The tenant in the other rental unit remains a tenant in their rental unit and has not complained about the Landlords' dog. Access to both rental units are the same for both tenants.

The Landlords confirmed that the Tenant only brought up his concerns with their dog on the same two occasions the Tenant attested to in his evidence noted in June and August 2021. The Landlords felt by throwing the treats over the fence to the dog, that the Tenant's issues were sufficiently resolved. The Landlords submitted examples of how the Tenant seemed to be appeased with the situation as they did not hear complaints from him after that time period. The Landlords submitted that they often saw the Tenant and his children at the neighbourhood park when they were walking their dog. They stated that there was always pleasant conversation in these situations, and the Landlords stated they exchanged Christmas presents in 2021.

The Landlords included two text messages dated December 2 and 3, 2021 from the Tenant saying that *"Just as a heads up...my nerve pain has gone from bad to worse tonight."* and that he had finished his laundry and he was going to catch up on *"some much needed sleep as i have not slept the past few nights due to the nerve pain."*

Regarding the dog bite incident on April 12, 2022, the Landlords' video demonstrates that rather than continuing to walk past the Landlords' dog, *"you can see Tenant turns the corner walks directly towards [dog], bends down and puts his hand on [dog] face to pet him. This does not appear to Landlord that the Tenant had any concerns/or fear towards [dog]."* The Landlords' written submission includes:

*Tenant also states in his written response that by May 1, 2022 he was no longer "feeling safe, dealing with insomnia and being kept awake by loud music after 11pm". Please note, none of these concerns were ever communicated to Landlords in writing or verbally at any time. In fact, the only time Tenant had communicated concerns regarding insomnia/not sleeping*

*was on December 2021 through text message to Landlords detailing his battle with his own personal health condition involving ongoing nerve pain that was resulting in having severe issues with not being able to sleep-I have attached this text message as evidence.*

The Landlords point out in their written submission that the [dog] had not escaped their home. On May 27, 2022, the situation was reported by the Tenant as the Landlords' dog was present in the backyard behind the gate (along with the Landlord present) with no leash or muzzle. The Landlords wrote that animal control had investigated this event and found no contravention of the bylaws. The Landlords attached the October 5, 2022 at 8:12 a.m. email from animal control bylaw office confirming this fact.

The Landlords testified that there was no loud music played after 11:00 p.m. They stated they have two young children, and they would not live that way. The Landlords stated that the Tenant did not provide any written notice/complaint to them about loud music being played after 11:00 p.m.

The Landlords uploaded pictures of the fencing in their backyard that demonstrated a chain-linked fenced area surrounding their shed. Then a separate metal fence just in front of the Tenant's entranceway into the rental unit. This particular fence does not appear to have a locking mechanism on the gate.

The Landlords submit that no compensation money is owed by them to the Tenant. The female Landlord stated she was diagnosed with an adjustment disorder caused by, she stated, the circumstances in this tenancy for which her doctor prescribed an anti-anxiety medication.

### 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.*

***Protection of tenant's right to quiet enjoyment***

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

- (a) reasonable privacy;*
- (b) freedom from unreasonable disturbance;*
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];*
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.*

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.*

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 asks me to analyze 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.

The Tenant submitted evidence of two periods of time where he alerted the Landlords to their dog’s aggressive nature. This occurred in June 2021 and August 2021. The Landlords suggested a possible way to quiet their dog by the Tenant throwing treats over the fence to him. The Tenant tried this course of action and did not further alert the Landlords of continual problems. I find that the Tenant’s freedom of unreasonable disturbance and significant interference were not breached in this time period.

The April 12, 2022 dog bite incident unfortunately resulted in the Tenant being bitten on his arm and being treated at the hospital. I find the Tenant embellished his fear or cautiousness of the dog; however, in the video, it is evident that the Tenant walked up to the dog and extended his arm and hand possibly to pet the dog. The hospital records do not support a three-inch deep bite mark, rather “*There is probable soft tissue swelling over the ulnar aspect of the right forearm. Mild irregularity over the skin and suspected diffuse skin thickening.*” No expert opinion evidence was proffered.

The Tenant reported the incident to animal control, and the dog was subsequently designated as an aggressive dog. No further contraventions of the animal control bylaw

were claimed or found against the Landlords. After this bite incident, I find that the Tenant suffered some interference from the dog's presence near his rental unit. I note that the Landlords' lack of locking mechanism on their outside fence was not additive to their claim and was against city bylaw notice that a fully enclosed unit was needed for the area in the backyard of the Landlords' home. The Tenant vacated the rental unit two and one-half months after the April 12<sup>th</sup> event, so the interference was a short period of time.

Pursuant to Sections 7 and 67 of the Act, I find that the Tenant's right to quiet enjoyment of the residential property was breached after the April 12, 2022 dog bite incident. No further incidents arose, and I find the Tenant is entitled to **\$350.00** for the remaining days he resided in the rental unit after the dog bite incident.

The Tenant decided to move and vacated the rental unit on June 30, 2022. I do not find that it is the Landlords' responsibility to pay for the Tenant's movers or moving materials. I decline to award compensation for this part of the Tenant's claim.

As the Tenant is successful in his claim, he is entitled to recovery of the application filing fee. I grant the Tenant **\$100.00** to reimburse him the application filing fee.

### Conclusion

I grant a Monetary Order to the Tenant in the amount of \$450.00. The Landlords must be served with this Order as soon as possible. Should the Landlords 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: December 21, 2022

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Residential Tenancy Branch