



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCT, DRI, MNSD, OLC, FFT

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking the following relief:

- a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement;
- disputing a rent increase;
- a monetary order for return of all or part of the security deposit and/or pet damage deposit;
- an order that the landlords comply with the *Act*, regulation or tenancy agreement; and
- to recover the filing fee from the landlords for the cost of the application.

The tenant and the tenant's spouse attended the hearing and each gave affirmed testimony. One of the landlords also attended and gave affirmed testimony. The parties were given the opportunity to question each other and to give submissions.

The parties agree that all evidence has been exchanged, all of which has been reviewed and the evidence I find relevant to the application is considered in this Decision.

During the course of the hearing the parties agreed that the tenant has vacated the rental unit, and therefore the application for an order that the landlords comply with the *Act*, regulation or tenancy agreement is dismissed.

### Issue(s) to be Decided

The issues remaining to be decided are:

- Has the tenant established a monetary claim as against the landlords for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for loss of enjoyment?
- Has the tenant established that rent has been increased contrary to the law?
- Has the tenant established a monetary claim as against the landlords for return of the security deposit and/or pet damage deposit?

### Background and Evidence

**The tenant** testified that this fixed-term tenancy began on May 1, 2021 for a 2 year term, for rent in the amount of \$2,000.00 payable on the 1<sup>st</sup> day of each month. A new lease was created for a tenancy to commence on June 1, 2021 and reverted to a month-to-month tenancy after May 31, 2022 for rent in the amount of \$2,500.00 payable on the 1<sup>st</sup> day of each month. At the beginning the tenancy in 2019 the tenant paid a security deposit to the landlords in the amount of \$1,250.00 and a pet damage deposit in the amount of \$1,000.00 which was collected around May 1, 2019, none of which has been returned to the tenant. The rental unit is a single family dwelling, and a copy of each of the 2 tenancy agreements has been provided for this hearing.

The tenant further testified that the landlord came to the tenants during COVID and told the tenants that since the tenants had inquired about a new lease, the landlord wanted to do some improvements on the property and increase the rent. A Mutual Agreement to End Tenancy has been provided for this hearing, and the tenant testified that was the landlords' way of ending the tenancy and increasing rent. A rent increase of \$1,000.00 was proposed in addition to the \$2,000.00 that the tenants had been paying. When it came time to sign the new lease, the tenants had no option and told the landlords that the tenants were very aware of the landlords' manipulating tactic. The tenants ultimately moved out of the rental unit in March, 2023.

Two weeks after filing this dispute the landlords served the tenants with a notice to end the tenancy for the landlord's use of property, and the tenants disputed it. However, the tenants found an appropriate rental unit and moved in February, 2023. The tenant tried to give the property back to the landlords, but received no response and had to pay for both places. The tenant didn't know how to log into the hearing, and was consequently late, and the Arbitrator was not very understanding. The landlord obtained a judgment of \$7,500.00.

The tenant has provided a Monetary Order Worksheet setting out the following claims, totaling \$37,698.77:

- \$239.77 for stain;
- \$1,350.00 for siding and trim on a wall;
- \$600.00 for landscaping blocks for mud and debris;
- \$60.00 to purchase house numbers;
- \$180.00 for Rino board tape to protect floors;
- \$9,000.00 for an illegal rent increase;
- \$19,000.00 for loss of enjoyment;
- \$350.00 for septic repair x 2;
- \$180.00 for rugs at the homeowner's request;
- \$2,239.23 for pruning; and
- \$4,500.00 for return of deposits.

While the tenants lived in the rental unit the septic was leaking everywhere, causing loss of enjoyment. Contractors left a mess for weeks on end, and the tenants had to clean it up which took 1 to 2 weeks for the tenant and the tenant's spouse. The tenant contacted the landlord, neighbours, the municipality, Environment BC and Fisheries and Oceans to get the property to a livable condition. Nothing has been done even to this day. It affected the tenant emotionally, mentally and created problems in the household. The tenant couldn't look at neighbours in the eyes, telling everyone that the tenants were waiting on the landlords, and had to do some repair themselves. It was absolute, complete negligence of the landlords, and the tenants documented it to the best of their ability. Neighbours were telling the tenants that it was not normal to experience such negligence.

The tenants were told when they moved in about a wall in the back, and the tenant was asked to deal with it. The tenant installed a door and siding which was never reimbursed, costing \$1,350.00 including vapour barrier, siding and wood trim around the doors. The tenant owns a siding company and has provided a copy of his Invoice in that amount. The wood framing materials were already there, and the landlord came by and took photographs, showed it to his client and no compensation was ever discussed; the landlord treated it as a gift. The tenant showed the landlord the complete wall, and he said, "I'll get you on the next one." Material was to be paid for, not labour. The wall was exposed and had to be done and the landlord said to get it done, and no payment was ever received. The tenant claims \$239.77 for stain on the back stairs, and \$1,350.00 for siding and trim on the wall.

The property was eroding quite abit, so the tenants brought in blocks to keep mud and debris off. The yard was never dry and constantly eroding. The landlord said it looked great. The tenant claims \$600.00 for the landscaping blocks.

The landlord had indicated that the CVRD was coming by and house numbers had to be put up. The cost was \$40.00 and the tenant claims that amount and gasoline to go get them.

Rino board is like cardboard on a roll. The tenant had to protect the floors, which is why the tenant gave a \$1,000.00 pet damage deposit. When contractors were coming, the tenants knew that window contractors would be there, and the tenants put the Rino board down in anticipation to protect the floors. Windows took 8 weeks to complete.

In the back yard there is a shed, and beside was a septic leak. Affluent was on the ground, and the tenant dug around it, exposed the leak, took photographs and bought a part, fixed it and covered it up. The landlord wouldn't deal with it. Then the tenant found another leak and did it again. The tenant claims \$350.00 for the repairs.

The landlord came to inspect, took photographs and the entire home had softwood flooring. The landlord told the tenant's wife to get some rugs and the landlord would pay the money back. The tenant's wife purchased them to cover and protect the flooring.

It took the tenants 2 or 3 weeks of cleaning up branches from every tree on the property and getting rid of them properly. It was a big job, working evenings and weekends. When the tree pruners came and contractors, the tenants had to clean it up, schedule the contractors and get the septic cleaned which the tenants were reimbursed for, but were left to deal with it by exposing it for the septic company. The tenant claims \$2,239.23 for pruning.

The landlord said that whatever the tenants did on the property which maintains or increases the value, they would be compensated for.

**The tenant's spouse** testified that the tenancy was a problem within the first 5 months of the tenancy. The roof was leaking in the kitchen and the tenant's spouse had to put a pot under it, and the tenant had to repair it. Also, the basement flooded, and the tenant had to get it vacuumed. There was a lot of water and furniture was damaged; carpets had to be tossed, which were very heavy and wet. The tenant does not seek compensation for that, but it's an example of the loss of enjoyment of the rental unit. One would think it would be a great beach front property, but was a nightmare, and the tenants are happy to be gone now.

**The landlord** testified that the tenancy began in 2019. The parties talked, and the tenants had signed a 2 year lease and wanted another 2 year term, but the owner only

agreed to 1 year because he was thinking about moving back in. The landlord told the tenant that, who asked if it was more money that the owner wanted, but the landlord didn't know. It was agreed that the tenants would pay an additional \$500.00 per month, but the tenants would have to sign a Mutual Agreement to End Tenancy to get rid of the first tenancy agreement and sign a new one. The tenants knew this in June, 2022.

With respect to the tenant's monetary claim, throughout the tenancy, the landlord treated them with an intent that they enjoy it, and worked with them about putting in a new roof, windows, deck and creating a better view. All of a sudden now, at the end of the tenancy, since the owner said he wants the house back, the claim is made. Most of the tenant's claim either is not supported with receipts or dates, and no authorization. The landlord sent the tenants an email around the start of the tenancy that nothing is to be done without written consent, and deductions from rent would not be tolerated. A copy has been provided for this hearing.

The tenants decided to contest the Two Month Notice to End Tenancy For Landlord's Use of Property, then decided to stop paying rent at the end of January. The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and the tenants didn't comply. Because the tenants didn't pay the rent, they forgo anything prior to that date. The tenants didn't get 1 free month of rent because they disputed the 10 Day Notice.

The tenants signed the Mutual Agreement to End Tenancy and accepted that fact at the last hearing and went on about the new agreement commencing June 1, 2021.

The landlord disputes that the tenants ever paid a security deposit or a pet damage deposit, and the tenants weren't supposed to have a dog.

The tenant had testified that he didn't receive a copy of the move-out condition inspection report, but he did because he has provided it for this hearing. The landlord's evidence package was returned unclaimed, so the landlord determined that the address given by the tenant was no good.

No work order has been provided by the tenant, and there is no date that staining was done; it was done before June 1, 2021 and therefore not applicable to this case because that's when the tenancy agreement was effective.

Siding and trim on a wall was never authorized, and the tenant has not provided any receipts.

There was no authorization for landscaping blocks; the tenant did that for his own benefit.

The tenants took the house numbers with them when they moved out.

There is no receipt or authorization for Rino board.

With respect to a rent increase, the landlord testified that the tenants signed a new tenancy agreement. The landlord confronted the tenants with things that the owner was saying about COVID, and was thinking about moving back to the rental unit, then the tenants said that if it's money they want, the tenants agreed to \$2,500.00 per month.

With respect to the claim for loss of quiet enjoyment, the landlord testified that the tenants had more enjoyment. The landlord trimmed trees for the view, installed new roof and new windows, and they agreed and were happy. Some of the photographs provided by the tenants were taken prior to the landlord going to clean it up. It took a couple of days, and the bill was sent to the owner. The landlord also trimmed hedges, and worked with the tenants, who seemed to be happy.

Septic repair was not authorized, and by doing it himself the tenant caused more problems. The landlord told the tenant that he wanted an expert to assess it. The landlord has had a company pump it out and an assessment done as well as some of the field repaired. Then there was a water leak on the road, which overloaded the seal. Since then, the landlords have worked with the Health Authority, and no one lives in the rental unit currently.

With respect to rugs, the landlord told the tenants that the landlord would purchase them with receipts from the tenants. However, the landlord has not received any receipts and the rugs are gone.

The landlord thought the parties were on a friendly basis, but now finds out that the tenant has recorded things and had all of this in the works. Nothing came up before the tenants moved out, and when the tenants were authorized, they got paid.

#### SUBMISSIONS OF THE TENANT:

The tenants have provided in evidence an email from multiple people and neighbour stating that the condition that the tenants kept the property. The tenants did their best to live a very happy life in a nice location and quite unfortunately it turned into a bad experience. Evidence of the security deposit and pet damage deposit may be found in emails.

SUBMISSIONS OF THE LANDLORD:

None

Analysis

The tenant has provided copious amounts of evidence, including photographs with multiple handwritten explanations and submissions, all of which I have reviewed.

I have reviewed the tenancy agreement, and it is clear that the tenants mutually agreed to end the first tenancy and entered into another tenancy agreement voluntarily, albeit for higher rent. I do not accept that the tenants had no choice but to sign the new agreement. Once a fixed-term tenancy ends, it reverts to a month-to-month tenancy unless the tenancy agreement specifies that the tenancy ends at the end of the fixed term, and there are rules around that. If faced with the possibility of eviction, the tenants could have disputed it. The tenants did dispute the Two Month Notice to End Tenancy For Landlord's Use of Property, but failed to pay rent, which caused the landlord to issue a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. Not only did the tenants sign a new tenancy agreement for the increased amount of rent, but also signed a Mutual Agreement to End Tenancy for the previous agreement. Therefore, I find that the tenants knew exactly what they were doing, and I am not satisfied that the tenant has established that rent was increased contrary to the law, and I dismiss the tenant's application disputing a rent increase, without leave to reapply.

With respect to the security deposit and pet damage deposit, I have reviewed all of the evidence, and no where does there appear to be any indication that the tenant actually paid either, and the landlord disputes that any were paid. The tenant had indicated that it might be evident in some of the emails or text messages. I have reviewed all of the evidence, including all photographs and handwritten descriptions. There is no evidence to support the tenant's claim that the deposits were paid to the landlord, and I dismiss the tenant's claim for the return of the deposits.

With respect to the tenant's monetary claim for damage or loss, the onus is on the tenant to satisfy the 4-part test:

1. that the damage or loss exists;
2. that the damage or loss exists as a result of the landlords' failure to comply with the *Act* or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the tenants made to mitigate any damage or loss suffered.

A tenant may not make improvements to a rental unit without the written consent of the landlord. If emergency repairs, such as septic or sewage leaking, the tenant may make the repairs as “emergency repairs,” but there are rules around that:

33 (3) A tenant may have emergency repairs made only when all of the following conditions are met:

- (a) emergency repairs are needed;
- (b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;
- (c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.

(4) A landlord may take over completion of an emergency repair at any time.

(5) A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant

- (a) claims reimbursement for those amounts from the landlord, and
- (b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

(6) Subsection (5) does not apply to amounts claimed by a tenant for repairs about which the director, on application, finds that one or more of the following applies:

- (a) the tenant made the repairs before one or more of the conditions in subsection (3) were met;
- (b) the tenant has not provided the account and receipts for the repairs as required under subsection (5) (b);
- (c) the amounts represent more than a reasonable cost for the repairs;
- (d) the emergency repairs are for damage caused primarily by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(7) If a landlord does not reimburse a tenant as required under subsection (5), the tenant may deduct the amount from rent or otherwise recover the amount.



The landlord testified that there was no authorization for the tenant to do anything with the septic, and that by doing it himself, it caused more problems. I find that the tenant has not complied with Section 33, and I dismiss \$350.00 claim for septic repair.

I disagree with the landlord that since the stain work was done before June 1, 2021 it is not applicable because it was during a term of the previous tenancy agreement. The tenancy length is the length of time that the tenants resided in the rental unit. However, I agree that there is no work order or date, and I find that the tenant has failed to satisfy element 2 in the test for damages.

I see no evidence that the tenant was authorized to put up a wall or siding or trim. The same applies to landscaping blocks and Rino board. I also accept the undisputed testimony of the landlord that the tenants took the house numbers at the end of the tenancy as well as the rugs, and I dismiss those claims.

If the tenants suffered any loss of quiet enjoyment, the tenants ought to have spoken to the landlords about their concerns of how their enjoyment of the property was affected. There is very little evidence of that.

The tenants have provided evidence of material, construction debris and a trailer, which I agree took up some of the space that the tenants were entitled to enjoy. The tenants have also provided a copy of an email to the landlord dated June 21, 2021 indicating that on June 4 an arborist and the landlord worked on the property leaving it in disarray, frustrating the tenants with the amount scattered throughout the property. And a reply acknowledging that only some of the debris was left by the landlord or contractors. The tenant testified that it took 2 or 3 weeks of cleaning up branches and getting rid of them property.

I accept the testimony of the landlord that the landlord also completed some improvements during the tenancy. However, having found that the tenants suffered a loss of a portion of the yard for construction materials left by the landlord, and the tenants were left to clean up after pruning, I find that the tenants are entitled to nominal damages. As explained in Residential Tenancy Policy Guideline #16 – Compensation for Damage or Loss, nominal damages are a minimal award. “Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.” Considering the evidence and the testimony, I find that the tenant has established a claim of nominal damages in the equivalent of 1 month’s rent, or \$2,500.00.

Since the tenant has been partially successful with the application the tenant is also entitled to recovery of the \$100.00 filing fee.

I grant a monetary order in favour of the tenant as against the landlords in the amount of \$2,600.00. The landlords must be served with the order which may be filed for enforcement in the Provincial Court of British Columbia, Small Claims division as an order of that Court.

### Conclusion

For the reasons set out above, the tenant's application disputing a rent increase is hereby dismissed without leave to reapply.

The tenant's application for a monetary order for return of the security deposit and pet damage deposit is hereby dismissed without leave to reapply.

The tenant's application for an order that the landlords comply with the *Act*, regulation or tenancy agreement is hereby dismissed without leave to reapply.

I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$2,600.00.

This order is final and binding and may be enforced.

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: August 23, 2023

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Residential Tenancy Branch