



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, MNR, LRE, LAT, FF

### Introduction

This was the reconvened hearing dealing with the remaining part of the tenant's application for a monetary order for money owed or compensation for damage or loss and for costs of emergency repairs, for an order suspending or setting conditions on the landlord's right to enter the rental unit, an order authorizing the tenant to change the locks to the rental unit and to recover the filing fee.

The tenant had also filed for an order cancelling Notices to end the tenancy, which was dealt with in my Interim Decision of August 12, 2011. This Decision should be read in conjunction with my Interim Decision and Reasons, which cancelled the Notice to end the tenancy.

The tenant had testified fully in support of her application and the hearing was reconvened to accept oral submissions from the landlord in response.

The parties and witnesses appeared, gave affirmed testimony and the landlord was provided the opportunity to present their evidence orally and in documentary form, and to make submissions to me.

### Issue(s) to be Decided

1. Is the tenant entitled to a monetary order for costs of emergency repairs and money owed or compensation for damage or loss?
2. Is the tenant entitled to orders suspending or setting conditions on the landlord's right to enter the rental unit and authorizing the tenant to change the locks to the rental unit?

### Background and Evidence

The tenant's claim is as follows:

One month's rent	\$1,300.00
Frustrating rental agreement, harassing	\$500.00
Providing horses and dogs With alternate accommodations	\$1,500.00
False allegations to the police	\$1,000.00

Loss of business due to harassment	\$1,500.00
Loss of use of barn due to mould	\$850.00
Loss of use of paddock	\$1,000.00
Harassment of guests	\$1,000.00
Loss of other amenities	\$1,000.00
Loss of quiet enjoyment	\$1,000.00
Filing fee	\$100.00
<b>TOTAL</b>	<b>\$10,650.00</b>

Landlord's response:

#### **Issue #1- One month's rent:**

In response to the tenant's application, the landlord, by owner JB, stated that as to the tenant's request for one month's compensation as the result of receiving a 2 Month Notice to End Tenancy, the landlord submitted that they issued the Notice in error, have apologized for that error, and therefore are not obligated to compensate the tenant an amount equal to one month's rent.

#### **Issue #2- Frustrating rental agreement, harassing.**

The landlord submitted that they did not harass the tenant, but merely dropped off several requests to the tenant requesting she complete repairs as well as notices to the tenant of their intention to access the rental unit in order for the landlord to complete repairs.

The landlord testified and submitted evidence that the written requests to the tenant were dated on June 13, 2011, another one on June 13, 2011, which revised the earlier request, another dated June 24, 2011. The landlord also submitted a notice on July 1, 2011, of their intention to access the rental unit to inspect the tenant repairs.

The landlord also submitted a response on July 24, 2011, to the tenant's request for repairs, which was dated on June 22, 2011.

The landlord also submitted a notice to the tenant on July 1, 2011, of their intent to complete repairs.

The landlord testified that all visits, 5-6 in total in June, were in response to the tenant's requests for repairs and to access the rental unit for repairs, and to have the tenant complete repairs which they believed the tenant was required to complete.

Upon query, the landlord testified that she did not know how old the fencing was, but guessed it was about 10 years old.

**Issue #3-Providing horses and dogs with alternate accommodations:**

The landlord stated that she believed this claim was due to the tenant receiving a 2 Month Notice to end the tenancy, but submitted that as she withdrew the Notice, the claim was invalidated.

**Issue #4- False allegations to the police:**

The landlord disputed making false allegations and claimed that this was a private, police matter, not a landlord-tenant dispute. The landlord claims that the request has to do with telephone messages between the parties.

The landlord also submitted that the tenant has made threatening phone calls to the police about her and that she has filed a complaint.

**Issue #5- Loss of business due to harassment:**

The landlord responded that she cannot understand how the tenant would lose business as the tenant's rental application listed the tenant as retired. The landlord also pointed out that the tenant had supplied no evidence in support of this part of her claim.

**Issue #6- Loss of use of barn due to mould:**

The landlord stated that she noticed mould on the back room of the barn, on the June 2, 2011, inspection, but that the parties agreed that it was due to a lack of ventilation. The landlord submitted that the tenant said she was fine with spraying the wall down with bleach, and was not aware that the tenant claimed there was a leak until June 22, 2011, and that they offered to inspect the claimed leak and repair it if necessary.

**Issue #7- Loss of use of paddock:**

Landlord JB stated that the landlords have been denied access to the rental unit to make the repairs; however landlord JS submitted that the tenant should minimize her loss by making the repairs herself.

Upon query, the landlord admitted that she knew the tenant would have horses on the premises.

**Issue #8-Harrassment of guests:**

The landlord denied having any contact with the tenant's guest on June 22, 2011, as she was there to deliver a notice. The landlord submitted that this claim arose due to a current dispute with the tenant's guest and that she had no contact with the guest.

**Issue #9- Loss of other amenities:**

The landlord contends that she was not given a list of repairs by the tenant until June 2, 2011, and that a number of repairs have been made. The landlord stated that according to the move-in inspection, there were only 2 repairs which were to be made, the screen door and bathroom light fixture.

The landlord also contends that on June 28, 2011, she had the light fixture, but was denied access.

**Issue #10- Loss of quiet enjoyment:**

The landlord stated that the tenant was provided her quiet enjoyment and that any visits to the rental unit and premises were for viable reasons. The landlord also stated that she could not mail all the notices to the tenant due to the postal strike.

Upon query, the landlord stated that the balance of any repairs have not been made by the landlords due to the ongoing issues with the tenant and that they have not tried to access the rental unit to accomplish the repairs.

Landlord JS stated that the tenant's claim to not being able to use the fireplace lacks merit as she has observed the fireplace being used. This landlord also contended that the structure which was referred to as a barn in the tenancy agreement was actually not a barn, but more of a "workshop," not intended to house the tenant's horses.

Upon query, the landlord acknowledged that she knew the tenant intended to house her horses on the property and I note that the written submissions of the landlord referred to the structure as a barn and make repeated references to the barn and the tenant's use of the barn.

The landlord's witness affirmed the structure in question was a barn and that there was mould on the walls.

In response, the tenant submitted that the landlord never offered a light fixture and that many repairs made, such as the toilet and remediated the mould, have been made by her or her husband.

The tenant stated that the landlord intended for the structure to be a barn and that it has always been used as a barn. The tenant also stated that the landlord knew she had two horses when she moved in, there were stalls built-in prior to her tenancy, and stated that the fencing is over 16 years old.

The tenant denied denying access, as she informed the landlord she could not handle the repair issues or the landlord's entry until after mid-July, as she, the tenant, had to deal with putting her mother into a care facility. The tenant also submitted that due to

the ongoing accusations and problems, the only request she has made was that a third party be present during the landlord's visits.

The tenant estimated she has had approximately 2 ½ months of enjoyment of her rental unit.

### Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

Only the evidence and testimony relevant to the issues and findings in this matter are described in this Decision.

In a claim for damage or loss under the Act or tenancy agreement, the claiming party has to prove four different elements:

**First**, proof that the damage or loss exists, **secondly**, that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement, **thirdly**, to establish the actual amount required to compensate for the claimed loss or to repair the damage, and **lastly**, proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed. In this case, the onus is on the tenant to prove damage or loss.

Where the claiming party, the tenant in this case, has not met all four elements, the burden of proof has not been met and the claim fails.

**One month's rent:** Section 44 of the Residential Tenancy Act (the "Act") states that a landlord may end a tenancy by issuing a 2 Month Notice to End the tenancy and section 51 of the Act states that a tenant receiving the Notice is entitled to compensation equal to one month's rent. However, the tenant applied to cancel the Notice due to her intention of continuing the tenancy, landlord in this case withdrew the Notice and the tenancy is not ending pursuant to this Notice, which is required under section 51.

As I have cancelled the Notice in my Interim Decision and the tenancy did not end, I therefore **dismiss** the tenant's claim for **\$1,300.00**.

**Frustrating rental agreement, harassing, and loss of quiet enjoyment(\$1,500.00 total)**-I find that on a balance of probabilities that these two issues are similar in nature and will consider them as one.

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the *Act*; use of common areas for reasonable and lawful purposes, free from significant interference.

Residential Tenancy Branch Policy Guideline #6 defines harassment as “engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome”. As such, what is commonly referred to as harassment of a tenant by a landlord may well constitute a breach of the covenant of quiet enjoyment. There are a number of other definitions; however all reflect the element of ongoing or repeated activity by the harasser.

Upon a review of the content of the three requests for tenant repairs to the tenant by the landlord within one month, including 2 on the same day, I find that the repeated requests to be an intrusion on the tenant's quiet enjoyment of the rental unit. On a balance of probabilities, I found the requests to be unsubstantiated and meant to cause the tenant disruption to her quiet enjoyment.

For instance, the landlord requested the tenant to repair damage to the back deck due to pet damage; however, there was no proof that any alleged “damage” was due to the tenant's pet. Rather the move-in inspection report suggests that the back deck was not in good condition at the start of the tenancy.

Also, the landlord requested that the tenant repair the fence rails yet the condition inspection report states that the fence was damaged.

I find the landlord lost credibility with their testimony that the barn was in fact a “workshop” when all their previous testimony, their witnesses’ testimony and evidence made continual references to a barn.

I therefore accept the testimony of the tenant that the landlord engaged in a course of harassment, beginning in June 2011, and effectively ended her quiet enjoyment when she refused to pay for the garbage collection, which was not in her tenancy agreement. I find the landlord attempted to have the tenant make repairs which are the responsibility of a landlord and I therefore find the tenant has established a **monetary claim** for loss of quiet enjoyment and harassment. I find a reasonable amount of compensation to be **\$750.00**.

**Providing horses and dogs with alternate accommodations-**I find the tenant submitted insufficient evidence of a monetary loss in providing her animals with other accommodations and I **dismiss** her claim for **\$1,500.00**.

**False allegations to the police-**I do not find that this claim is related to a residential tenancy and I therefore **dismiss** the tenant's claim for **\$1,000.00**.

**Loss of business due to harassment-**I find the tenant submitted insufficient evidence that she lost business due to harassment. For instance the tenant did not submit any evidence that she lost the sale of a show puppy and that it was due to the actions of the landlord. I therefore **dismiss** her claim for **\$1,500.00**.

**Loss of barn due to mould**-I find the evidence contradictory and unconvincing that the tenant lost the use of the barn for a week. I also find that the evidence does not prove whether the presence of mould is the responsibility of the landlord or the tenant to remove. As I find that disputed evidence does not sufficiently meet the burden of proof, I therefore **dismiss** the tenant's claim for **\$850.00**.

**Loss of use of the paddock**-I accept that the paddock is the responsibility of the landlord to repair and that the landlord did not make a timely repair of the paddock; however, the tenant has not proven a specific amount of damages. Therefore I find that the tenant has not met the third part of the burden of proving damages.

Residential Tenancy Branch policy suggests that a dispute resolution officer may, however, award "nominal damages", which are a minimal award. These damages may be awarded where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right. I have considered nominal damages in relation to some of the compensation claimed by the tenant.

In this case, I find the tenant is entitled to a **monetary claim** for devaluation of the tenancy in the amount of **\$100.00**.

**Harassment of guests**-I find the evidence and testimony inconclusive and does not sufficiently establish that the landlord engaged in activity showing harassment of the tenant's guests. I therefore **dismiss** her claim for **\$1,000.00**.

**Loss of other amenities**-The landlord acknowledged making some small repairs, but confirmed that other repairs have not been made. I do not accept that the tenant's one time refusal to the landlord for entry to the rental unit due to having a family celebration relieves the landlord of making required, requested repairs. I find that the landlord's lack of addressing the repairs to the rental unit, in particular the paddock, to have diminished the value of the tenancy. I find reasonable compensation to be in the amount of \$200.00.

As the tenant was largely successful with her application, I find she is entitled to recovery of the filing fee of \$100.00.

I dismiss the tenant's portion of her application seeking an order suspending the landlord's right to enter the rental unit as I have found that the landlord has complied by issuing the proper notice.

I also dismiss the tenant's portion of her application requesting authority to change the locks and I find she has not established an entitlement for the same.

Conclusion

The tenant has established a **monetary claim** in the amount of **\$1,150.00**, comprised of harassment and loss of quiet enjoyment in the amount of \$750.00, \$100.00 for loss of use of the paddock, \$200.00 for loss of other amenities and \$100.00 for recovery of the filing fee.

The tenant is directed to satisfy this monetary claim by withholding the amount of \$1,150.00 from her next monthly rent payment. For clarification, the tenant's monthly rent will be in the amount of \$150.00 for the month in which she satisfies the monetary order.

In the event the tenancy ends prior to fulfilling the monetary claim, the tenant is hereby provided a **monetary order** in the amount of **\$1,150.00**.

I am enclosing a monetary order for \$1,150.00 with the tenant's Decision, which may be filed in the Provincial Court of British Columbia (Small Claims) should the landlord fail to comply with this monetary order.

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: September 30, 2011.

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Residential Tenancy Branch