



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      AAT ERP RP LAT LRE MNDCT OLC PSF FFT

### Introduction

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

- an order allowing access to and from the rental unit for the tenant and the tenant's guests;
- an order that the landlord make emergency repairs for health or safety reasons;
- an order that the landlord make repairs to the rental unit or property;
- an order permitting the tenant to change locks to the rental unit;
- an order limiting or setting conditions on the landlord's right to enter the rental unit;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement;
- an order that the landlord comply with the *Act*, regulation or tenancy agreement;
- an order that the landlord provide services or facilities required by the tenancy agreement or the law; and
- to recover the filing fee from the landlord for the cost of the application.

The tenant and the landlord attended the hearing and the landlord was accompanied by legal counsel. The parties each gave affirmed testimony and provided evidentiary material in advance of the hearing. The parties, or legal counsel, were given the opportunity to question each other. No issues with respect to service or delivery of documents or evidence were raised, and all evidence provided has been reviewed and is considered in this Decision.

During the course of the hearing the tenant withdrew all claims except the claims for monetary compensation.

Issue(s) to be Decided

The issue remaining to be decided is:

- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for moving costs, harassment, recovery of rent, loss of wages, entering the suite without permission, and refusal to make repairs?

Background and Evidence

**The tenant** testified that this fixed term tenancy began on August 1, 2018 and was to expire on August 1, 2019, however the tenant took possession of the rental unit on July 24, 2018 and moved out on November 1, 2018. Rent in the amount of \$600.00 per month was payable on the 1<sup>st</sup> day of each month, and there are no rental arrears to November 1, 2018. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$300.00, and no pet damage deposit was collected. However, the tenant deducted \$100.00 for a filing fee as per a previous order of the director, Residential Tenancy Branch and \$300.00 to recover the security deposit from the rent paid for October, 2018. The rental unit is one of 2 basement suites, and the landlord resides in the upper level of the home. A copy of the tenancy agreement has been provided for this hearing, and the tenant testified that a room-mate in the rental unit also had a separate tenancy agreement with the landlord.

The tenant has provided a Monetary Order Worksheet setting out the following claims:

- \$1,800.00 to recover all rent paid from August 1 to October 31;
- \$300.00 for the damage deposit;
- \$500.00 for moving costs;
- \$516.00 for loss of wages;
- \$500.00 for harassment towards the tenant's fiancé;
- \$300.00 for an ICBC deductible;
- \$1,500.00 for harassment towards the tenant;
- \$1,500.00 for the landlord's refusal to fix an illegal suite;
- \$750.00 for breaking the tenancy agreement respecting electricity; and
- \$750.00 for the landlord entering the rental unit without permission.

The tenant withdraws the \$300.00 claim for the security deposit and the \$300.00 claim for the ICBC deductible.

The tenant further testified that he installed an air conditioning unit in the rental unit on July 27, 2018, and was threatened by the landlord with eviction by telephone for doing so. The parties had a meeting that day and the landlord wanted the air conditioner removed and professionally installed at the tenant's expense, and gave the tenant another agreement to sign to increase rent by \$50.00 per month. The landlord called the tenant again 4 hours later requesting a second meeting, wherein the landlord said she was adamant about the air conditioner and rent, and noticed a freezer in the rental unit. The landlord then requested another \$50.00 per month for the freezer. The tenant refused both rent increases.

A series of unpleasant text messages were exchanged between the parties and on August 13, 2018 the internet stopped working for 24 hours due to the landlord spraying water on the modem while cleaning the garage. The tenant was working on his Masters program, and asked the landlord to fix it, and it was repaired, but the landlord told the tenant he could not use the internet to make money. The tenancy agreement includes internet, and on August 2, 2018 the tenant had asked to have his own internet installed at no cost to the landlord. The landlord initially agreed, but when the technician showed up, the landlord would not allow holes to be drilled in the garage and didn't want it installed.

The tenant further testified that on August 14, 2018 the landlord served a One Month Notice to End Tenancy for Cause citing illegal activity that is likely to damage the landlord's property and that the tenant had not done required repairs. The tenant disputed it and a hearing was held on September 25, 2018. The Notice was cancelled and the tenancy continued.

Electrical problems started on August 15, 2018. There was a power outage and a breaker tripped causing the internet to stop working. The tenant went into the garage to turn the breaker on, and then received a text message from the landlord threatening to call police. The tenant was simply exercising his right to electricity, and feels that access to the breaker panel is part of the tenancy agreement. The same situation occurred again on August 20. The following day the breaker tripped again and the landlord refused to fix it stating that there was no need and wanted to enter to the rental unit but refused to bring a certified electrician. On August 22, 2018 the landlord gave the tenant 24 hours notice to enter the rental unit on August 23, but the landlord's husband was stuck in traffic so they didn't enter.

On September 1, 2018 the landlord questioned the tenant about how many loads of laundry the tenant did between 1:45 and 6:45. The following day the landlord wanted to inspect the rental unit and entered the rental unit without the tenant's permission. The

tenant was in the bathroom, and the landlord and spouse were there when the tenant came out. They inspected the rental unit and left. During cross-examination the tenant was asked whether or not his room-mate had given permission for the landlord to enter, to which the tenant replied that the room-mate wasn't there and the landlord ought to have received permission from both tenants.

On September 27, 2018, 2 days after the hearing, the landlords wanted to inspect again and the tenant refused saying they could do so on October 1, which they did.

The tenant missed 3 days of work; July 31 when the harassment and phone calls started. The tenant had to call the Residential Tenancy Branch numerous times that day and on August 1, 2018. During the summer the tenant has a different employer and was not able to call from work. Three calls were made each of those days resulting in 3 hours per day for each of those days, including August 15, which was after the One Month Notice to End Tenancy for Cause was issued. The tenant has provided a letter from an employer verifying that the tenant missed those days of work, and would have been paid \$21.50 per hour, for a total loss of 24 hours, and that the tenant had advised that the misses were to deal with his tenancy.

There were also 3 threats from the landlord by text message to call police for entering the garage to re-set the breaker. Further, the bedroom plug kept tripping off and on and twice lights went off because the breaker to the landlord's suite tripped. The circuits should be isolated.

The tenant also testified that the landlord video-taped the tenant without the tenant's knowledge and provided copies for the last hearing. The tenant's privacy was violated and had to close blinds without heat, light and electricity.

The tenant claims monetary compensation for harassment in trying to increase rent and making a false claim to get the tenant to move out because the landlord wanted more money.

**The landlord** testified that the house was brand new at the beginning of the tenancy, and the tenant installed an air conditioner in the window using cardboard and a hockey stick. Photographs have been provided for this hearing. The landlord offered to have it installed professionally at the tenant's expense, and on August 1, 2018 called the Residential Tenancy Branch who advised that the landlord could ask for money for the tenant moving in early and that the tenant could not install the air conditioner. The landlord gave the tenant 12 days notice to prove that no damage had been caused and then would have been okay with installing it.

The landlord spoke with the tenant's fiancé and told her that the landlord was unhappy with the way the tenant spoke to the landlord and spouse. The landlord also told her that the tenant ought to have told the landlord earlier about large appliances, and asked her to talk to the tenant about negotiating more rent.

When the landlord and spouse entered the rental unit, it was to install a towel bar in the bathroom, and the tenant's room-mate said they could enter that day, and let them in.

The landlord had called the same electrician who was there when the house was built. He asked if there were too many plugs in one circuit, but the landlord didn't know. The landlord told the tenant about the electrician's concern. The tenant used an extension cord and the breaker didn't turn off, however the reason it tripped was because the tenant had air conditioning and a freezer on the same plug or circuit. On one occasion the internet went off due to Telus issues, and the landlord's son also needs it. The landlord denies refusing to have separate internet for the rental unit, and the tenant didn't have to pay for it.

The landlord installed a video recording system pointing at entrances because the landlord was fearful of someone entering the property. The landlord and spouse live upstairs, and there are 2 suites rented.

The landlord called the police because the tenant kept entering the garage, which is not part of the tenancy.

### **Submissions of the Tenant:**

The extension cord was for the computer, not for the freezer. The air conditioner and freezer were on separate circuits. When the breaker tripped the computer would go off but the air conditioner and freezer were still working. There was no risk of danger and no mention by the landlord or spouse about a risk or danger; it was all about money. The landlord harassed the tenant in trying to increase rent, and the hearing was a false claim to get the tenant to move out; the landlord wanted more money.

### **Submissions of the Landlord's Legal Counsel:**

The landlord rectified all issues professionally, entered the rental unit with permission, and there was no harassment to the tenant.

For clarity, the tenant gave notice to end the tenancy; no move-in or move-out condition inspection reports were completed by the parties; and the landlord has not received the tenant's forwarding address in writing. Also, the tenant's room-mate moved out earlier.

### Analysis

In order to be successful in a claim for damage or loss, the tenant must be able to establish that the tenant suffered damages or a loss, and that the loss was a result of the landlord's failure to comply with the tenancy agreement or the *Residential Tenancy Act*, the amount of the damage or loss, and what efforts the tenant made to mitigate any damage or loss suffered.

In this case, the tenant paid rent in the amount of \$600.00 per month for a total of 3 months, which equates to \$1,800.00. The tenant claims all of that from the landlord in addition to other monetary compensation for the landlord's failure to comply with the tenancy agreement or the *Act*, totalling \$7,816.00.

However, it is very clear that the tenant has failed to comply with the *Act* and the tenancy agreement.

1. The tenant was not permitted in the garage and that was not a part of the tenancy at all.
2. The tenant withheld \$300.00 from the last month of rent to ensure he'd get the security deposit back. The *Act* prohibits that, and the tenant is not entitled to receive back a security deposit until no later than 15 days after the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing.
3. The tenant testified that he had professionally installed a window air conditioning unit, which appears evident in the photograph that the tenant used a hockey stick to hold it in place. A tenant is not entitled to make alterations without the landlord's consent.
4. The tenant gave notice to end the tenancy on October 1, 2018 effective November 1, 2018. The tenant may not end a fixed term tenancy prior to the end of the fixed term, and any notice to end a tenancy must be given the day before the date rent is payable under the tenancy agreement, unless the parties mutually agree in writing.

The issue before me is whether or not the tenant has established that the tenancy was devalued by the landlord's actions or inactions, and that the tenant suffered damages or a loss as a result. The tenant's claim for damage or loss includes moving expenses and loss of quiet enjoyment of the rental unit. I have reviewed all of the evidentiary material including all of the text messages, some of which have been provided several times, and the written submissions of the landlord and attachments.

With respect to the tenant's claim for recovery of all rent paid, there is no question that the tenant moved in earlier than the tenancy agreement provides for, moved out a day after the tenancy ought to have ended according to the *Act*, and had a roof over his head for the entire tenancy, and I dismiss that portion of the tenant's claim.

With respect to the tenant's claim for moving expenses, the landlord issued a One Month Notice to End Tenancy for Cause which was disputed by the tenant and the Arbitrator cancelled the Notice ordering that the tenancy continue. There is no evidence that the tenant had any issues with the landlord after the September 25, 2018 hearing, and I am not satisfied that the tenant moved out earlier than the end of the fixed term as a result of the landlord's failure to comply with the *Act* or the tenancy agreement. The tenant's claim for moving expenses is dismissed.

In order to be successful in the tenant's claim for loss of wages, I must be satisfied that the loss was due to the landlord's failure to comply with the *Act*. Giving a notice to end a tenancy is not contrary to the *Act*. The landlord issued the One Month Notice to End Tenancy for Cause and the tenant testified that the reasons for issuing it were for: illegal activity that is likely to damage the landlord's property, and that the tenant has not done required repairs. Although there is no evidence of illegal activity, the landlord testified that the tenant was given 12 days to prove to the landlord that no damage was done when the tenant installed the air conditioner, and the tenant did not dispute that. I find that the tenant has failed to establish that the issuance of the notice to end the tenancy was contrary to the *Act*. Therefore, the missed work day for August 15, 2018 cannot succeed. With respect to the missed work on July 31 and August 1, 2018, the landlord admitted that within the first week of the tenant moving in, the landlord spoke to the tenant and to the tenant's fiancé about increasing rent. I find that the tenant has established that work was missed on both days due to the landlord's persistence in increasing rent contrary to the *Act*. Therefore, I allow the tenant's claim for \$344.00.

The tenant's fiancé is not a party to the tenancy agreement, and the jurisdiction of the *Residential Tenancy Act* applies to disputes between a landlord and a tenant. Since the tenant's fiancé is not a party, I dismiss the \$500.00 claim.

"Harassment" is defined in the Dictionary of Canadian Law as, "engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome."

I also refer to case law: Mandel J. in *Roth v. Roth*, [1991] 9 C.C.L.T. (2d) 141 at p.159 stated:

In my view the principle to follow is put thus by Fleming, *The Law of Torts*, 7<sup>th</sup> ed. (Sidney: Law Book, 1987) at p.575:

Clearly, no liability is warranted unless the intrusion is substantial and of a kind that a reasonable person of normal sensitivity would regard as offensive and intolerable. Merely knocking at another's door or telephoning on one or two occasions is not actionable, even when designed to cause annoyance; but if the calls are repeated with persistence, and in the midst of night, so as to interfere unreasonably with comfort or sleep, liability will ensue.

I find that the landlord had every right to threaten to call the police if the tenant continued to enter the garage. Therefore, that cannot be considered "harassment." There is no doubt, however that the landlord continued to attempt to increase rent contrary to the *Act*, and the tenant's refusal to enter into another tenancy agreement the first time ought to have been the end of that discussion. The landlord testified that the tenant ought to have notified the landlord about the freezer or other large appliances, but there is nothing in the *Act* or the tenancy agreement that prohibits a freezer.

I have also reviewed the video clips and photographs provided by the tenant, and none show the inside of the rental unit. Although the landlord could have advised the tenant about the cameras and didn't do so prior to entering into the tenancy agreement, unless the landlord recorded inside the rental unit, I cannot consider such a safety feature to be harassment or loss of quiet enjoyment.

I find that the tenant's claims of \$1,500.00 for the landlord's refusal to fix an "illegal suite" and the \$750.00 claim for breaking the tenancy agreement respecting electricity are one in the same. A landlord is not required to call a certified tradesperson just because the tenant demanded it. A landlord is required to maintain a rental unit in a state that makes it suitable for occupation by a tenant, and heat and electricity are fundamental requirements. The photograph provided by the tenant marked, "No access to heat," shows a thermostat with the temperature at 71 degrees, and clearly there was heat. However I find that the tenancy has been devalued by the electrical and internet turning off during a time when the tenant is studying for his Masters. After reviewing all of the evidence, including written submissions of the parties, I am satisfied that the tenant has established a claim of 20% of one month's rent, or \$120.00, considering the tenancy lasted 3 months.

With respect to the tenant's claim of \$750.00 for the landlord entering the rental unit without permission, the landlord testified that the tenant's room-mate told the landlord to enter that date, and the room-mate let the landlord in. The tenant's testimony is that the



room-mate wasn't there. Perhaps the room-mate wasn't there when the tenant came out of the bathroom, however I do not see how the tenant suffered any damage or loss as a result of the landlord entering to make a repair. Continued entry would constitute a basis for loss of quiet enjoyment, but that is not the case here.

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

### Conclusion

For the reasons set out above, 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 \$564.00.

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: November 20, 2018

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Residential Tenancy Branch