



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CAPACITY FOREST MANAGEMENT LTD. and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDCT, FFT

### Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution, filed on April 7, 2021, wherein the Tenant requested monetary compensation from the Landlords in the amount of \$2,800.00 including return of rent paid for and to recover the filing fee.

The hearing of the Tenants' Application was conducted by teleconference at 1:30 p.m. on September 7, 2021. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me. The Tenant was represented by R.L., the Comptroller, M.B. the Owner, and C.P. the Field Engineer. Both Landlords called into the hearing.

The parties were cautioned that recordings of the hearing were not permitted pursuant to *Rule 6.11* of the *Residential Tenancy Branch Rules*. Both parties confirmed their understanding of this requirement and further confirmed they were not making recordings of the hearing.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

1. Is the Tenant entitled to monetary compensation from the Landlords?
2. Is the Tenant entitled to recovery of the filing fee?

### Background and Evidence

This tenancy originally began August 29, 2016. The rent was \$2,700.00 per month. The tenancy ended on February 28, 2021.

The Tenant sought monetary compensation for rent paid for February 2021. R.L. testified that they gave notice to end their tenancy effective February 28, 2021, yet before the tenancy ended the Landlords' family moved into the rental unit. She stated that when their Field Engineer went to the rental unit in early February, he saw the Landlord's items in the bathroom and kitchen, and it was clearly being used.

The Field Engineer, C.P., also testified. He confirmed that he arrived at the rental unit on February 9, 2021 (at the beginning of his shift) and at that time the Landlords' daughter, S., was moving the Tenant's groceries out of the kitchen. He also stated that the Landlord's daughter had moved in her furniture, toiletries, music equipment etc. When it became clear the Landlords had moved back in, the Tenant's employees moved out all of their items out that day and the remaining boxes the next morning.

In response the Landlord, W.U. testified. W.U. stated that he did not take possession of the unit, but rather, his daughter set up Zoom in a bedroom upstairs in the rental area to use for her Zoom concerts and to put her makeup on.

W.U. also stated that it was a term of the agreement that the Landlords would have use of the rental unit at times during the tenancy, and in particular for Christmas. W.U. conceded that they did not include this agreement in the tenancy agreement but also stated they would not have agreed to rent out the unit if they did not have use of the property for Christmas. He confirmed they did not give the Tenants a discount on their rent when the Landlords were using the rental property.

W.U. also stated that the Tenants were already planning to move on February 9, 2021 and did not move out just because his daughter was using the property.

In reply, R.L. stated that it was not true that the Landlords could use the rental property during the Christmas break. She stated that one of their employees, T.Y., told the Landlords they could use the property in 2017, but they did so without the Tenant's consent and this was never repeated.

### Analysis

After consideration of the testimony and evidence before me I find as follows

I find the Tenant gave notice to end their tenancy effective February 28, 2021. Pursuant to section 28 of the *Act*, the Tenant was entitled to exclusive possession of the rental unit until that time. For clarity I reproduce that section as follows:

#### **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.

I accept C.P.'s testimony that when they arrived at the rental unit for their shift in early February the Landlords' daughter had already moved into the unit. I also accept his testimony that when this was discovered, he and other employees of the Landlord moved from the unit. I do not accept the Landlords' submission that the Tenant intended to vacate the unit on that date in any event of their daughter's actions. The evidence supports a finding that the Tenant intended to vacate the unit on February 28, 2021: the effective date of their notice to end their tenancy.

I find the Landlords breached the Tenants rights pursuant to section 28 of the *Act* when the Landlords' daughter moved her items into the rental unit in early February 2021 and

began using the rental unit for her own purposes. I find the Landlords regained possession of the rental unit at that time thereby ending the tenancy.

I find the Landlords' have submitted insufficient evidence to support a finding that it was a term of the tenancy agreement that the Landlords would have use of the rental unit at times during the tenancy and in particular during Christmas. Had this been a term of the tenancy agreement it was incumbent on the Landlord to include it in the tenancy agreement. The tenancy agreement is silent with respect to this alleged term.

Having regained possession of the rental unit in early February 2021, the Landlords ended the tenancy and were therefore no longer entitled to rent from the Tenant. I therefore grant the Tenant's request for return of their rent paid for February 2021 in the amount of **\$2,700.00**.

As the Tenant has been successful in this Application, I also award them recovery of the **\$100.00** filing fee for a total award of **\$2,800.00**. In furtherance of this I grant the Tenant a Monetary Order in the amount of **\$2,800.00**. This Order must be served on the Landlords and may be filed and enforced in the B.C. Provincial Court (Small Claims Division).

### Conclusion

The Tenant's request for monetary compensation from the Landlord for return of rent paid for February 2021 as well as recovery of the filing fee is granted. The Tenant is granted a Monetary Order in the amount of **\$2,800.00**.

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: October 6, 2021

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Residential Tenancy Branch