



# **Dispute Resolution Services**

Residential Tenancy Branch  
Office of Housing and Construction Standards  
Ministry of Housing and Social Development

## **DECISION**

**Dispute Codes:** OPR, MNR, MNDC and FF

### **Introduction**

This application was brought by the landlord seeking an Order of Possession pursuant to a 10-day Notice to End Tenancy served by registered mail on January 2, 2009.

The landlord also sought a Monetary Order for the unpaid rent, damages and the filing fee for this proceeding. In addition, as authorized under section 64(3)(c) of the *Act*, I permitted the landlord to amend the application to request retention of the security deposit in set off against the balance owed.

### **Issue(s) to be Decided**

This application requires a decision on whether the landlord is entitled to an Order of Possession in support of the Notice to End Tenancy and a Monetary Order for the loss of rent, filing fee and damages and authorization to retain the security deposit.

### **Background and Evidence**

This tenancy began November 1, 2007. Rent is \$800 per month and the landlord holds a security deposit of \$400.

During the hearing, the landlord gave uncontested evidence that the Notice to End Tenancy had been served when the tenant failed to pay the rent for January 2009. In the interim, the tenant concurred that he has not paid the rent for February either.

The landlord submitted evidence of a number of issues that would be considered under a notice to end for cause, but for which no monetary claims are made. As they are not pertinent to the present hearing, I have not repeated them herein.

In addition, the landlord advanced a number of monetary claims to be dealt with item by item in the Analysis section of this decision.

## **Analysis**

As to the claim for an Order of Possession, Section 46 of the *Act* which deals with notice to end tenancy for unpaid rent provides that a tenant may pay the overdue rent or make application for dispute resolution within five days of receiving the notice.

If the tenant does neither, they are presumed to have accepted that the tenancy ends on the date stated on the notice. In this matter, the tenant has not made application to dispute the notice and has not paid the rent noted.

Therefore, the landlord requested, and I find she is entitled to, an Order of Possession effective two days from service of it on the tenant.

I further find that the landlord is entitled to a Monetary Order to include the unpaid rent for January and February totaling \$1,600.

As to other items claimed, the landlord submitted and I find as follows:

**Yard work and minor upkeep - \$1,400.** The landlord pointed to an addendum to the rental agreement that included the term, "Tenant is responsible for yard maintenance

and other general repairs as per our discussions.” The landlord stated that the rent had been reduced from \$900 to \$800 per month on the understanding that the tenant would perform such duties. The tenant countered that he had done a great deal of yard work throughout the tenancy and provided a number of examples. Given the vagueness and potential ambiguity of the wording in the agreement, I find that I cannot determine with certainty whether the tenant had reasonably met the obligation, if not the expectations of the landlord. Therefore, I must dismiss this part of the claim.

**Building materials from garage disposed of - \$250.** The landlord made claim that the tenant discarded a small quantity of drywall and plywood from the garage and in addition to losing the materials, she incurred the cost of disposal. The tenant stated that he was permitted shared use of the garage, had to remove some materials to make space and believed the objects in question were refuse. With no illustrative material at the time it was removed from the garage, I cannot be certain of the value of the items in question and must dismiss this part of the claim.

**Broken window - \$320.** The landlord claims \$320 for a broken window and the tenant concurs that he is responsible for its replacement. However, the tenant asked if he could be permitted to see to the repair and that he already had an estimate. The landlord agreed to give him the opportunity and this is an item the landlord may claim in future if the work is not done.

**Unauthorized tree limbing - \$16,000.** The landlord makes claim for damage done to two walnut trees from which the tenant removed limbs. The landlord said that value was placed on the trees by a professional arborist and the area in which the rental unit is situate requires that all destroyed trees be replaced.

The landlord stated that the tenant had removed 20 limbs. The tenant stated that he had removed only two, one because it was broken and the other to balance the tree, and he was of the belief that he had consent to do so. While hearsay evidence may be

considered in an administrative proceeding, I am not prepared to consider a claim of this magnitude without more substantial evidence. In addition, the tenant submitted photographs of the trees to the branch but he had not served the same evidence to the landlord.

Therefore, I dismiss this part of the claim but grant the landlord leave to reapply on this issue.

Therefore, I find that the landlord is entitled to a Monetary Order, including recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off as follows:

January 2009 rent	\$ 800.00
February 2009 rent	800.00
Filing fee	50.00
Sub total	\$1,650.00
Less retained security deposit	- 400.00
Less interest (Nov. 1, 2007 to date)	- 7.02
<b>TOTAL</b>	<b>\$1,242.98</b>

## Conclusion

The landlord's copy of this decision is accompanied by an Order of Possession effective two days from service of it on the tenant and a Monetary Order for **\$1,242.98**.

The Order of Possession is enforceable through the Supreme Court of British Columbia and the Monetary Order is enforceable through the Provincial Court of British Columbia.

February 20, 2009

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Dispute Resolution Officer