



# **Dispute Resolution Services**

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

## **DECISION**

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

### **Introduction**

These applications were brought by both the landlord and the tenant.

By application of January 13, 2009, the landlord sought an Order of Possession pursuant to a Notice to End Tenancy for unpaid rent dated January 7, 2009. The landlord also sought a Monetary Order for the unpaid rent and recovery of the filing fee for this proceeding. In addition, I exercised my discretion under section 64(3)(c) of the Act to permit the landlord to amend her application to include a request to retain the security deposit in set off against any balance owed.

By application of January 13, 2009, the tenant seeks to have the Notice to End Tenancy set aside, an order for repairs and emergency repairs, an order that the landlord comply with the legislation and rental agreement and a rent reduction.

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

In the first instance, these applications require a decision on whether the landlord is entitled to an Order of Possession on the basis of the unpaid rent, the effective date, and whether the landlord is entitled to a Monetary Order for the unpaid rent and filing fee.

In the second instance, the applications require a decision on whether the tenant is entitled to a rent reduction, a Monetary Order for damages, and orders for landlord compliance and repairs and recovery of her filing fee.

### **Background and Evidence**

This tenancy began on or about September 12, 2008. Rent is \$700 per month and the landlord holds a security deposit of \$350 paid on or about September 12, 2008.

During the hearing, the landlord gave evidence that the Notice to End Tenancy had been served when the tenant had failed to pay the rent for January 2009. In addition, she said the tenant carried a rent shortfall of \$175 from early in the tenancy and had a rent shortfall of \$130 for February 2009.

The tenant contested the unpaid rent and stated that it had been paid directly by the ministry. However, the landlord reasserted that the rent had not been paid and the tenant was unable to provide any documentation that it had.

As to the tenant's application, she provided a copy of a letter to the landlord dated January 6, 2009 advising of a leak in the rental unit and making reference to having verbally advised of the leak a month earlier. The landlord stated that the January 6<sup>th</sup> letter was the first she had heard of the matter and that her husband had taken off work the following day and rented a wet vacuum to clean up.

The tenant also submitted an invoice from herself to the landlord for various services to attend to the water problem by four providers but provided no third party invoices to prove she had engaged or paid those providers.

## **Analysis**

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, I find the evidence of the landlord to be the more credible with respect to the rent. She requested and I find he is entitled to, an Order of Possession effective two days from service of it on the tenant.

As to the matter of the flooding, I also find the landlord's evidence to be the more credible and the landlord acted expeditiously to mitigate any damage that would have resulted from the water leak. The landlord said the cause seemed to be combination of a plugged sink and a fallen downspout.

However, the parties are agreed that the tenant suffered some brief inconvenience as a result of the water and I allow the tenant \$100 in compensation for the loss of quiet enjoyment.

The remainder of the tenants claims for repairs, emergency repairs, rent reduction, landlord compliance and rent reduction are dismissed.

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

Rent shortfall pre December 2008	\$ 175.00
Rent for January 2009	700.00
Rent shortfall for February 2009	130.00
Filing fee	<u>50.00</u>
Sub total	\$1,055.00
Less \$100 tenant credit for loss of quiet enjoyment	- 100.00
Less retained security deposit	- 350.00
Less interest (Sept. 12, 2008 to date)	- 1.59
<b>TOTAL</b>	<b>\$ 603.41</b>

## Conclusion

Thus, the landlord's copy of this decision is accompanied by an Order of Possession, enforceable through the Supreme Court of British Columbia, to take effect at 1 p.m. on May 31, 2009 and a Monetary Order for \$603.41, enforceable through the Provincial Court of British Columbia, both for service on the tenant.

February 17, 2009

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Dispute Resolution Officer