



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, CNR, MT, MNDC, FF

### Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent as well as to recover the filing fee for the proceeding. The Tenant applied for more time to make an application to cancel a Notice to End Tenancy as well as to cancel a Notice to End Tenancy for unpaid rent and utilities and for a monetary order for compensation for damage or loss under the Act or tenancy agreement.

The Landlord's application was originally heard on March 20, 2009 by way of Direct Request under s. 74(2(b) of the Act. The Landlord was granted an Order of Possession to take effect 48 hours after service of it on the Tenant as well as a Monetary Order for \$1,472.82 representing compensation for unpaid rent and recovery of the filing fee less the Tenant's security deposit plus accrued interest.

The Tenant applied for a Review of that Decision on March 25, 2009. In a Review Decision issued on April 7, 2009, the Dispute Resolution Officer ordered that a new hearing be held so that both Parties' applications could be considered. The Tenant claimed he did not receive a copy of the Review Decision and new Notice for the Review hearing and therefore did not serve the Landlord with a copy of them. The Landlord said she received a copy of both of those documents directly from the Residential Tenancy Branch.

### Issues(s) to be Decided

1. Is the Landlord entitled to end the tenancy?
2. Are there arrears of rent and if so how much?
3. Is the Tenant entitled to compensation for damages and if so, how much?

### Background and Evidence

This tenancy started on September 11, 2008. Rent is \$950.00 per month (which includes utilities) payable in advance on the 15<sup>th</sup> day of each month. The Tenant paid a security deposit of \$475.00 at the beginning of the tenancy.

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The Landlord said the Tenant was in arrears of rent for the period, January 16 – February 15, 2009 and also did not pay rent for the period, February 16, 2009 – March 15, 2009 when it was due and as a result, the Landlord served the Tenant in person on February 25, 2009 with a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities dated February 24, 2009. The Tenant gave his signed acknowledgement that he received the Notice that day. The Landlord said the Tenant has paid nothing since served with the Notice and is in arrears of rent to date in the total amount of \$3,375.00.

The Tenant claimed that he was late filing his application because he faxed it to the Residential Tenancy Branch on March 2, 2009, but someone contacted him and advised him that he would have to submit it in person. The Tenant said he went to the Kelowna Residential Tenancy Office the following day at 12:05 but was advised that the office was closed as of 12:00 noon and that he would have to return the following day. The Tenant filed his application on March 5, 2009. Consequently, the Tenant argued there were exceptional circumstances that prevented him from filing his application on time. The Landlord argued that it would be unfair to allow the Tenant to apply late based on his own lack of due diligence.

The Tenant also claimed that he had a verbal agreement with the Landlord that he could install a water filtration system and that if it worked properly, the Tenant could deduct the amount from the rent starting in January, 2009. The Tenant said that the parts and labour to install the system came to a total of \$3,082.91 plus taxes and that he sent invoices for the same to the Landlord in January, 2009. The Tenant admitted that one of the invoices for \$762.73 (dated in March 2009) for remedial plumbing services) is unpaid. The Tenant also argued that on or about March 3, 2009, the Landlord removed features from the cable package which was included in his rent without giving him a rent reduction.

The Landlord denied that there was an agreement as alleged by the Tenant. Instead the Landlord claimed that he and the Tenant discussed the matter at the beginning of the tenancy and the Landlord told the Tenant he would reimburse him ½ of the cost of the water filtration system at the end of the tenancy provided that the whole cost of the system was no more than \$600.00. The Landlord argued that the amount claimed by the Tenant was unreasonable and was never approved by him. The Landlord provided a quote for parts and labour to install a water filtration system for \$676.00. The Landlord denied receiving copies of invoices from the Tenant in January.

In support of his position that there was no agreement the Tenant could withhold rent, the Landlord provided copies of e-mail correspondence between himself and the Tenant during January and February, 2009. In 3 e-mails to the Tenant, the Landlord asked for the Tenant's rent payment. In a responding e-mail from the Tenant dated, February 24, 2009 the Tenant promised to pay the Landlord for January and February, 2009 as soon

as a banking problem was resolved. The Landlord argued that pay per view was removed from the Tenant's cable package because the Tenant was charging the cost of movies to the Landlord (which he claimed was not included in the rent).

## Analysis

Section 66 of the Act says that the director may extend a time limit to file an application but only in **exceptional circumstances**. The Tenant claimed that he did not know he had to file his application in person and did not know the Kelowna RTB office was only open until 12:00 noon. The Landlord argued that the Tenant could have determined these matters using reasonable due diligence. I find that the Tenant's reasons for filing late do not qualify as exceptional circumstances and his application to set aside the 10 Day Notice is dismissed on this ground.

Even if the Tenant's application was allowed, it would not succeed for the following reasons. The onus of proof is on the Tenant to show that there was an agreement between himself and the Landlord that he could deduct the cost of a water filtration system from his rent. The Landlord disputed that there was such an agreement and that the Tenant mailed him copies of invoices in January, 2009 as alleged. In support of his position, the Landlord relied on e-mail correspondence between himself and the Tenant in which the Tenant claimed he would pay rent for those months as soon as he could arrange for a transfer of funds. Given the contradictory evidence of the Parties, and in the absence of any corroborating evidence from the Tenant to resolve the contradiction, there is insufficient evidence that there was an agreement authorizing the Tenant to withhold his rent for January and February, 2009.

The Landlord amended his application to include a claim for rent arrears up to and including April 30, 2009. I find that there are rent arrears of \$3,325.00 for the period January 16, 2009 to April 30, 2009 and I award the Landlord that amount. I also find that the Landlord is entitled to recover his \$50.00 filing fee for this proceeding.

I find that there is insufficient evidence of an agreement with the Landlord that he would reimburse the Tenant for the cost of the filtration system. The Tenant claimed that he never discussed the cost with the Landlord. The Landlord claimed that he agreed to reimburse the Tenant for ½ the cost of the system provided it was no more than \$600.00. The Tenant also bears the onus of proof on this part of his claim. Given that the Tenant's evidence is disputed by the Landlord and in the absence of any corroborating evidence from the Tenant, I find that he is only entitled to \$300.00 for this expense. As the Tenant has been awarded compensation for this item, ***I order that the Tenant does not remove the water filtration system at the end of the tenancy or***

***the Landlord may apply for reimbursement of this amount plus compensation for any other damages that result.***

I also find that there is insufficient evidence that the Tenant has lost a service or facility that was included in his rent. In particular, I find that the Parties' agreement was that his rent would include cable. I find there is no evidence to support the Tenants' claim that the Landlord was also responsible for paying for his pay per view movies. Consequently, this part of the Tenant's application is dismissed.

In summary, the Landlord is entitled to a monetary order for \$3,375.00 and the Tenant is entitled to a monetary order for \$300.00. Pursuant to s. 62(3) and 72 of the Act I order that the awards be set off so that the amount owing to the Landlord is reduced by the amount owing to the Tenant. Consequently, the Landlord will be entitled to a monetary award of \$3,075.00. I also order pursuant to s. 38(4) of the Act that the Landlord keep the Tenant's security deposit plus accrued interest of \$2.18 in partial payment of the rent arrears. The Landlord will receive a monetary order for the balance owing of \$2,597.82.

Section 82(3) of the Act says that following a Review hearing, the director may confirm, vary or set aside the original decision or Order(s). The original Order of Possession dated March 20, 2009 is confirmed and remains in force and effect. The Monetary Order dated March 20, 2009 is set aside a new Monetary Order in the amount of \$2,597.82 will be issued to the Landlord. The Decision dated March 20, 2009 is varied only in so far as it deals with the amount of the monetary order issued to the Landlord.

## Conclusion

A monetary order in the amount of **\$2,597.82** has been issued to the Landlord and a copy of it must be served on the Tenant. If the amount is not paid by the Tenant, the Order may be filed in the Provincial (Small Claims) Court of British Columbia and enforced as an order of that court.

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: April 30, 2009.

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Dispute Resolution Officer