



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      OPC, MNSD, MND

### Introduction

This hearing dealt with the landlord's request for an Order of Possession for cause, a Monetary Order for damage to the rental unit and retention of the security deposit. Both parties appeared at the hearing and were provided an opportunity to be heard and to respond to the submissions of the other party. Both parties confirmed service of the landlord's evidence upon the tenant.

### Issues(s) to be Decided

1. Has the landlord established an entitlement to an Order of Possession?
2. Has the landlord established an entitlement to a Monetary Order and retention of the security deposit for damages to the rental unit?
3. Mutual resolution between parties.

### Background and Evidence

Upon hearing testimony of both parties and upon review of the evidence before me, I make the following findings. The tenancy commenced March 1, 2008 and the tenant's rent is subsidized by BC Housing. A security deposit of \$280.00 was paid at the commencement of the tenancy. On May 20, 2009 the landlord conducted an inspection of the rental unit. On May 29, 2009 the landlord issued a *1 Month Notice to End Tenancy for Cause* and served it upon the tenant personally that same day. The Notice has an effective date of June 30, 2009 and indicates the reasons for ending the tenancy are that the tenant:

- Seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
- Put the landlord's property at significant risk; and
- Caused extraordinary damage to the unit.

Upon enquiry the tenant testified that he attended the Residential Tenancy Office in early July 2009 to dispute the Notice; however, he did not bring a copy of the Notice with him and he did not file an Application for Dispute Resolution. The tenant explained

that he was experiencing problems with his wheelchair prior to July 2009; however, his sister was able to assist him.

The landlord testified that it is a non-profit housing society that houses people who are able to live independently. It was the landlord's position that the tenant needs more supportive care than the society can provide; however, the landlord has been working with the tenant and health workers to aid the tenant in finding more suitable housing.

The landlord testified that the Notice was served upon the tenant because the rental unit has been infested with bedbugs that have not responded effectively to numerous treatments and that the bedbugs spread to adjacent units. The landlord testified the tenant significantly damaged the rental unit walls, trim and caused the telephone cord to be ripped out. The landlord estimates the damage caused to the rental unit exceeds \$3,000.00 and for this hearing is requesting that the landlord be granted authorization to retain the security deposit in partial satisfaction of the damage caused to the rental unit.

A health and wellness officer appearing for the landlord testified that the tenant has been recently placed in a shelter and is on the waiting list for a supportive housing facility and that losing the shelter spot will jeopardize the tenant's chances of obtaining a place in the supportive housing.

The tenant acknowledged damaging the rental unit walls and telephone cord with his electric wheelchair and would pay to repair the damage if permitted to stay in the rental unit. Upon hearing the testimony of the health and wellness officer, the tenant agreed that it was in his best interest to vacate the rental unit and retain the shelter placement and stay on the waiting list for the supportive housing. The tenant requested two days to remove his belongings. The landlord requested an Order of Possession effective two days after service upon the tenant.

Evidence for the hearing included photographs of the damage, testimony and documentation pertaining to the tenant's income assistance and significant physical disabilities.

## Analysis

Upon hearing the testimony of the parties, I find the landlord had reasonable grounds to issue the 1 Month Notice to End Tenancy and the tenant failed to dispute the Notice within 10 Days of receiving the Notice or obtain an agent to dispute the Notice on his behalf. Therefore, I find the tenant was conclusively presumed to have accepted that the tenancy would end on the effective date on the Notice in accordance with section

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47(5) of the Act. In recognition of the landlord's right to obtain an Order of Possession and the agreement between the parties that the tenant's best interests are to vacate the rental unit as soon as possible and retain the shelter placement, the landlord is granted an Order of Possession effective two days after service upon the tenant.

Upon consideration of the evidence that the tenant is on income assistance and experiences significant physical impairment I find it unlikely the tenant will repair the damage or compensate the landlord for damage to the rental unit before he vacates. I also find the photographic evidence and undisputed testimony substantiates the landlord's position that damage that has been caused to the rental unit is in excess of the security deposit. Therefore, I grant the landlord's request to retain the tenant's security deposit and accrued interest in partial satisfaction of the damage caused to the rental unit.

## Conclusion

The tenant will vacate the rental unit and the landlord is provided an Order of Possession effective two days after service of the Order upon the tenant.

The landlord is authorized to retain the tenant's security deposit and accrued interest in partial satisfaction of the damage caused to the rental unit. The landlord is at liberty to make a separate application for a Monetary Order if the landlord chooses to pursue recovery of the remainder of the repair costs.

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: August 11, 2009.

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Dispute Resolution Officer