



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

### **Dispute Codes:**

CNC, MNDC, OLC, FF

### **Introduction**

This hearing dealt with an application by the tenant for an order to set aside a notice to end tenancy for cause. The tenant also applied for compensation under the *Act*, an order for the landlord to comply with the *Act* and for the recovery of the filing fee. Both parties attended the hearing and had opportunity to be heard.

### **Issue to be Decided**

Does the landlord have grounds to end this tenancy? Is the tenant entitled to compensation under the *Act*?

### **Background and Evidence**

The tenancy began on December 01, 2001. The rental unit is located in the basement of the home. The landlord lives upstairs. At the time the tenant applied to rent the unit, the landlord requested that a credit check be done. The tenant informed the landlord that due to some recent problems, her credit rating would be very poor. After consulting with a third party, the landlord agreed to rent to the tenant if she paid rent in advance along with one month's rent as security deposit

The monthly rent is \$1,250.00 plus \$80.00 for utilities payable on the first of each month. The tenant agreed to pay \$1,250.00 as security deposit. The landlord retained an additional \$1,250.00 from the advance rent that the tenant had paid as "carpet deposit". As of the date of the hearing, the landlord has a total of \$2,500.00 which he states is the security and pet damage deposit.

The landlord stated that the tenant was consistently late paying rent and in June 2009, approximately seven years after the start of the tenancy, the landlord agreed to collect rent on the seventh day of each month as the tenant had informed him that she gets paid on the seventh.

The tenant paid rent late for each of the five months following this agreement and on December 31, 2009, the landlord served the tenant with a 30 day notice to end tenancy for cause. The landlord filed rent receipts to confirm the dates that the tenant paid rent. Other reasons for the notice are that the tenant has significantly interfered with or unreasonably disturbed another occupant, adversely affected the quiet enjoyment, security, safety and physical well being of another occupant and caused damage to the landlord's property.

The tenant stated that in the summer of 2009, the landlord carried out a lot of repairs causing noise disturbances. The tenant did not advise the landlord about the disturbance, but reported the problem directly to the local City Authority. A by law officer visited the landlord to investigate the matter. The tenant stated that the noise stopped after this visit except for one more single occurrence. The tenant reported it to the City again and never heard back. The tenant stated that she moved out for one week and is claiming the return of one week's rent.

The landlord argued that he was not aware of the local bylaws, but abided by them after the visit from the bylaw officer. The landlord stated that the tenant went on a week's vacation and is attempting to claim the return of rent.

The landlord stated that the tenant is a member of a rescue dog association and consistently brings problem dogs home to look after them, until they can be placed. The tenant agreed that she is a member of this association and has brought dogs home, on a few occasions. The tenant admitted that she baby sits friends' dogs and has had up to four dogs at one time. The landlord complained that the dogs enter his residence freely and during one such incident the dog bit his wife on her finger. The landlord has two young children and fears for their safety.

The landlord also complained of noise disturbances from the tenant's unit which consist of dogs barking and three televisions all on at the same time. The tenant complained about the landlord's children being out of control and screaming a lot. The tenant also stated that the landlord was verbally abusive towards her and at times intimidated her.

During the hearing the above reasons for the notice to end tenancy and the tenant's claim for compensation were discussed at length. The parties engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

### **Analysis**

Pursuant to Section 63 of the *Residential Tenancy Act*, the dispute resolution officer may assist the parties settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order.

During this hearing, the parties reached an agreement to settle their dispute. Both parties agreed to the following terms:

1. The tenant agreed to move out by March 31, 2010.
2. The landlord agreed to allow the tenancy to continue till March 31, 2010.
3. The landlord agreed to return \$1250.00 plus applicable interest to the tenant.
4. The parties agreed to exercise any additional goodwill and spirit of cooperation necessary in regard to the above undertakings, which might be required to achieve a positive end to this landlord – tenant relationship.

During the hearing the landlord made a request under section 55 of the legislation for an order of possession. Under the provisions of section 55(1), upon the request of a landlord, I must issue an order of possession when I have upheld a notice to end tenancy. Accordingly, I so order.

The tenant must be served with the order of possession. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

Since the tenant established a part of her claim with regard to the overpayment of the security deposit, I find that she is also entitled to half the filing fee (\$25.00). I grant the tenant an order under section 67 of the *Residential Tenancy Act*, for **\$1,322.53**. This consists of the overpayment of the security deposit in the amount of \$1,250.00 plus the applicable interest of \$47.53 and half the filing fee of \$25.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

The tenant may use this order towards rent for March 2010. The landlord still holds a security deposit in the amount of \$1,250.00 and must return this amount in keeping with section 38 of the *Residential Tenancy Act*.

### **Conclusion**

The tenant will move out on or before **1:00 p.m. on March 31, 2010**. I grant the landlord an order of possession for this date. I also grant the tenant a monetary order in the amount of **\$1,322.53**.

These particulars comprise the full and final settlement of all aspects of this dispute for both parties.

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: February 09, 2010.

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Dispute Resolution Officer