



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

### Dispute Codes:

CNC, CNR, MNDC, LRE

### Introduction

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing.

### Issue(s) to be Decided

Should the 1 Month Notice to End Tenancy for Cause issued on February 2, 2010 and the 10 Day Notice to End Tenancy for Unpaid rent issued on February 2, 2010 be cancelled?

Is the tenant entitled to a monetary Order in the sum of \$1,100.00 for payments made in breach of the Act?

Should limits be placed on the landlord's right to enter the rental unit?

### Background and Evidence

This tenancy commenced on September 28, 2008, rent is \$1,600.00 per month, due on the first day of the month. A deposit in the sum of \$900.00 was paid on May 27, 2009.

The parties referenced a previous decision issued by dispute resolution officer Murphy, issued on May 12, 2009. This decision was read by the landlord and the parties understood that I would consider that decision. The decision issued on May 12, 2009 was a settled agreement, made between the parties in which the tenant agreed to pay the landlord "the amount of \$1905.00 which includes rent and the filing fee." The landlord stated that this payment was to include late payment fees that had been levied

and that were detailed on the evidence submitted for that hearing. The tenant stated that she agreed to the amount and that the issue of fees was not decided, that she had accepted the amount indicated as owed, but had not raised the issue of any fees that may have been included in the amount of payment agreed to at that time.

The tenant has applied for a monetary Order in relation to fees that she believes have been levied in the breach of the Act.

### Settled Agreement

After a period of approximately 1.5 hours of hearing the parties came to a mutual agreement that this tenancy would end. The tenant offered to move out of the rental unit no later than May 31, 2010 at 1 p.m. The tenant agreed she would pay rent for March, April and May in the amount of \$1,600.00 and that she understands rent is due on the first day of the month.

The landlords took some time to discuss the tenant's offer to move out and agreed to mutually end the tenancy. The male landlord indicated that he would defer to the female landlord, as he was not wholly satisfied with the terms of the settled agreement; however, both parties acknowledged understanding that the agreement was voluntary and the female landlord agreed to the settlement terms with the tenant.

In relation to the tenant's monetary claim agreement was made that I would make a finding in relation to what amount, if any, the tenant may have overpaid to the landlord as the result of fees and costs charged to her. Agreement was made that if I found that the tenant was owed money, rent abatement would be Ordered. Further, the parties agreed that if I found that the tenant owed the landlord money that a monetary Order would be issued to the landlord. The tenant agreed to this settlement and understood that the landlord has not made an Application requesting compensation, but that she would accept my decision in relation to the monetary dispute between the parties.

Therefore; based upon the settled agreement, I have issued an Order of possession to the landlord that is effective May 31, 2010 at 1 p.m.

### Monetary Claim

Both parties submitted spread sheets of payments made by the tenant indicating rent owed plus fees and other charges that have been assigned to the tenant by the landlord.

The parties agreed that the tenant has been charged late rent payment fees in the sum of \$125.00 for each late payment. I did not have a copy of the tenancy agreement before me, but the tenant confirmed that the agreement contained a clause indicating that the amounts allowed under the Act would be levied if payment was late or NSF.

The tenant did not dispute NSF fees that have been charged as they were made in the allowable amounts.

The landlord submitted that the settled agreement reached on May 12, 2009 dealt with the issue of any fees levied up until that time and that the tenant should be able to claim fee overpayments only from May 2009, forward. This was disputed by the tenant as she stated that payment agreed to on May 12, 2009 was for rent and filing fee only.

The tenant was levied a fee in the sum of \$125.00 for late rent payments in November 2008, December 2008 and January 2009 to August 2009 inclusive; totaling ten months in the amount of \$1,250.00. In August 2009 the landlord levied costs against the tenant for bailiff fees (\$225.00,) a writ of possession (\$80.00,) notary fees (\$15.00,) and GST (\$12.50.) These fees were included in the ledger as funds owed to the landlord and taken into account by the landlord when rent payment arrears were calculated.

The following summarizes the fees charged to the tenant:

Late payment fees November 2008 to August 2009 inclusive (10 months)	1,250.00
Writ of possession	80.00
Notary fee	15.00
GST	12.50
Total levied	1,607.50

The landlord stated that the fees were incurred as the result of the tenant's failure to comply with the terms of the tenancy, but that they did come to a mutual agreement once the bailiff arrived and that the tenant had not been evicted. The landlord indicated that they have not applied for dispute resolution requesting compensation.

The tenant agreed to payment of late fees in the sum of \$25.00 per month.

### Monetary Claim Analysis

After considering all of the written and oral evidence submitted at this hearing, I find that the decision issued on May 12, 2009 included a settled agreement and contained no finding by the dispute resolution officer. I find that the settled agreement was in relation to unpaid rent and filing fees only and that any fees paid by the tenant or assigned as rent during this tenancy will be considered in this Application. I base this decision on the settled agreement issued on May 12, 2009 which references only rent and filing fee costs. The parties dispute the intent of their settlement, therefore, in the absence of any evidence to the contrary and on the balance of probabilities, I find that I may consider late rent payment fees levied throughout this tenancy.

Residential Tenancy Regulation 7 determines fees that may be levied against a tenant by a landlord. A landlord may include a tenancy term requiring payment of an administration fee of not more than \$25.00 for NSF cheques returned by the bank or for late payment of rent. As the tenant has been assigned monthly late payment fees in the sum of \$125.00 for ten months, I find that the tenant is entitled to return of the overpaid portion in the sum of \$1,000.00.

In relation to the remaining fees levied for the bailiff, writ of possession, notary and GST; I find that the landlord was not entitled to assign these fees. I base this decision on the absence of evidence that the tenant provided written agreement that she was to pay the landlord these amounts. Further, the Act does not provide a landlord with the right to assign fees in breach of the Act. Any amount that is in dispute between parties may be settled through the dispute resolution process, where a monetary Order that is enforceable through the Court would be considered.

The parties submitted a record of the following payments, charges and balance owed by the tenant:

	Payment	Balance Owed
November, December 2009 rent	3,200	+2,842.00
January 2010 rent	1,600.00	+1,242.00
February payment	500.00	+1,742.00
February rent owed	1,600.00	+142.00
March rent owed	1,600.00	1,458.00 arrears
Amount overpaid by tenant for late fees	1,000.00	458.00 arrears
Amount of overpaid bailiff, writ, notary, GST	357.50	100.50 arrears
Balance of March rent owed by tenant		100.50

The landlord's spread sheet evidence included other costs such as utilities, house cleaning, yard clean-up, duct cleaning and advertising; all of which appear to be for the landlord's reference for other costs of the tenancy. The late payments fees were recorded as interest charges.

Therefore, pursuant to section 67 of the Act, I find that the tenant owes the landlord the sum of \$100.50 for March rent. If, by the time the parties receive this decision, March rent has been paid in the sum of \$1,600.00, I find that the tenant may deduct \$100.50 from April rent owed on April 1, 2010.

If the tenant wishes to terminate the tenancy earlier than the settled agreed upon date she must provide the landlord with written Notice as provided in section 45 of the Act. The tenant has agreed to leave the rental unit in a clean condition, as provided in section 37 of the Act. The steps to be taken at the end of the tenancy related to the deposit and a move-out condition inspection were reviewed with the parties.

#### Landlord Right to Enter the Rental Unit

Neither party provided testimony in relation to this portion of the Application. The landlord is bound by section 29 of the Act; which allows the landlord to conduct a monthly inspection of the unit, according to the required notice provided in the Act. The parties may come to a mutual agreement for a landlord's entry and if this is not possible then the landlord must adhere to the requirements of the Act. The presence of the tenant is not required if proper written notice has been given as required by the Act. A copy of this section of the act is appended after the conclusion of this decision.

### Conclusion

The parties reached a mutual agreement that the tenancy will end no later than May 31, 2010, at 1 p.m. Based upon the settled agreement I have issued the landlord an Order of possession effective at that time.

I find that the tenant has been assigned fees in breach of the Regulation, in the sum of \$1,000.00 plus costs in the sum of \$357.50 in breach of the Act and have offset those amounts against rent owed. The tenant owes the landlord \$100.50 toward March rent which may be deducted from April rent owed, if March rent has already been paid in full. Details on payment of this amount are contained in my analysis.

A copy of the *Guide for Landlords and Tenants in British Columbia* is included for reference by each party.

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: March 24, 2010.

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Dispute Resolution Officer

### **Landlord's right to enter rental unit restricted**

**29** (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

- (i) the purpose for entering, which must be reasonable;

- (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

(c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;

(d) the landlord has an order of the director authorizing the entry;

(e) the tenant has abandoned the rental unit;

(f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).