



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      CNR, MNDC, RR, OPR, OPB, MND, MNR, MNSD, FF

### Introduction

This hearing dealt with cross applications. The tenant applied to dispute a Notice to End Tenancy for Unpaid Rent; for monetary compensation for damage or loss under the Act, regulations or tenancy agreement; and, for authority to reduce rent payable. The landlord applied for an Order of Possession for unpaid rent and breach of an agreement with the landlord; for a Monetary Order for damage to the rental unit and unpaid rent; authority to retain the security deposit and recovery of the filing fee. Both parties appeared at the hearing and confirmed service of documents upon them. Both parties were provided the opportunity to be heard and to respond to submissions of the other party.

As a procedural note, the landlord indicated he was seeking a Monetary Order for damage to the rental unit but did not indicate an amount sought or evidence in support of the claim. I determined the claim for damages was pre-mature as dismissed that part of the landlord's application with leave to reapply.

The tenant appeared with a person he identified as a witness who would testify about the lack of smoke alarms in the rental unit. There was no dispute concerning the lack of smoke alarms in the unit and the witness was not called to testify. At the end of the teleconference call I informed the parties of my decision with respect to unpaid rent and the end of the tenancy and that I was reserving my decision concerning compensation for the tenant with respect to a lack of smoke alarm and hood fan in the rental unit. The

tenant's witness appeared and began giving testimony concerning other issues and issues already acknowledged by the tenant. The teleconference call was ended after the witness failed to comply with my instructions to stop giving testimony concerning issues already heard and issues not raised by the tenant or landlord as part of the applications before me.

#### Issues(s) to be Decided

1. Is there a basis to cancel the Notice to End Tenancy for unpaid rent?
2. Did the tenant establish an entitlement to compensation for damage or loss against the landlord?
3. Is the landlord entitled to an Order of Possession?
4. Is the landlord entitled to a Monetary Order for unpaid rent?
5. Is the landlord authorized to retain the filing fee.

#### Background and Evidence

I heard undisputed testimony as follows. The tenancy commenced April 1, 2010. The tenant paid a \$350.00 security deposit and is required to pay rent of \$700.00 on the last day of the preceding month under a written tenancy agreement. In May 2010 there was a cooking fire in the rental unit and the wall and cupboard was damaged as a result. The unit was inspected by the fire department. There are no smoke alarms in the rental unit and two alarms are located in the hallway that serves 10 units. The tenant did not pay rent for July 2010 and on July 4, 2010 the landlord posted a *10 Day Notice to End Tenancy for Unpaid Rent* (the Notice). The Notice indicates rent of \$720.00 is outstanding and has an effective date of July 14, 2010. The tenant did not pay the outstanding rent after receiving the Notice but disputed the Notice within the time permitted under the Act.

The landlord explained that the Notice indicates rent of \$720.00 was outstanding because a late fee of \$20.00 was included. The landlord withdrew his request for the late fee during the hearing.

The tenant admitted not paying rent for July 2010 and explained he withheld rent because the unit is unsafe. Upon enquiry, the tenant stated that there are no smoke alarms or a hood fan in the unit and that the fire department had advised the landlord to make the units safer for tenants. The tenant acknowledged receiving the second page of the Notice and that the Notice informs tenants that they must not withhold rent without proper authority to do so. The tenant indicated he is prepared to move out at the end of July 2010.

The tenant is also claiming compensation of \$1,400.00 against the landlord for the loss of the ability to cook without fear of causing another fire and to hold the landlord culpable for not making units safer for tenants. Upon enquiry, the tenant testified that in May he was cooking French fries and left the fries cooking unattended. The tenant stated that he does not use the stove to cook any longer for fear he may be called away from the stove and the lack of a smoke alarm to indicate something is burning. As a result the tenant eats sandwiches and soup.

The landlord attributed the cause of the fire to the tenant being careless and drunk while cooking. The landlord testified that the tenant had agreed to paint the smoke damaged wall and the landlord would have a hood fan installed but that the tenant did not paint the wall. The tenant acknowledged a discussion about painting the wall but claimed the landlord did not supply the paint or provide paint codes for the colour.

As evidence for the hearing I was provided with a copy of the 10 Day Notice as well as a 1 Month Notice to End Tenancy for Cause issued June 18, 2010. The tenant provided photocopies of the ceilings in the rental unit and hallway to demonstrate the placement of smoke detectors and damage to the kitchen.

## Analysis

### **Landlord's application**

I note the landlord failed to use the tenant's full name on the Notice and this application. However, the tenant received the Notice, disputed the Notice and received the landlord's application without raising this issue. Having provided the tenant the opportunity to be heard and respond to the landlord's submissions, I find the tenant has not been prejudiced by the landlord's failure to use the tenant's full name and I amend the Notice and the landlord's application to match the tenant's name on the tenant's application.

Under section 26 of the Act, a tenant is required to pay rent when due under the terms of the tenancy agreement unless the tenant has the legal right to withhold rent. In this case the tenant did not have the landlord's consent or the authority of a Dispute Resolution Officer to withhold rent or any other right to withhold rent under the Act. Accordingly, the tenant violated the terms of the tenancy agreement and the Act and I find the landlord was entitled to serve the Notice to End Tenancy for Unpaid Rent upon the tenant. The tenant did not provide me with a basis to cancel the Notice and find that this tenancy has ended for unpaid rent.

Where a Notice is posted on the door, it is deemed to be received three days later under section 90 of the Act. Accordingly, the effective date on the Notice is automatically changed to reach July 17, 2010 under section 53 of the Act. Since the tenancy has ended and the tenant continues to occupy the rental unit, I provide the landlord with an Order of Possession effective two (2) days after service upon the tenant. The Order of Possession must be served upon the tenant and may be enforced in The Supreme Court of British Columbia.

Having heard the tenant has not paid rent for July 2010 I award the landlord \$700.00 for unpaid rent. The landlord is authorized to retain the tenant's security deposit in partial satisfaction of the outstanding rent. I also award the filing fee to the landlord. Enclosed for the landlord is a Monetary Order in the amount of \$400.00 including the filing fee [\$700.00 rent - \$350.00 security deposit + \$50.00 filing fee].

### **Tenant's application**

Under the Act, a landlord must maintain a rental unit in a manner that complies with health, safety and building standards required by law. In this case I heard the fire department has inspected the rental unit and I find the fire department has the authority to determine the fire safety measures that must be in place in the rental unit and residential property as well as ensuring the landlord is complying with the fire safety laws. While I am satisfied the landlord could do more to ensure the tenant safety, I was not provided with sufficient evidence that the landlord has violated the health, safety and building standards required by law.

Awards for monetary compensation for damage or loss are intended to be restorative, meaning the award should place the applicant in the same financial position had the damage or loss not occurred. A Dispute Resolution Officer does not have the authority to award punitive damages to punish the respondent.

Awards for compensation are provided under sections 7 and 67 of the Act. In order to be successful in obtaining a monetary award it is not enough to allege a violation of the Act, regulations or tenancy agreement by the other party. Rather, the applicant must establish all of the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation of the other party has caused the party making the application to incur damages or loss as a result of the violation;

3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Upon considering the evidence before me, I find it telling that the tenant's submissions focused on the lack of smoke detectors and fear of another fire yet the tenant requested monetary compensation only and not a request for the landlord to install smoke detectors in making this application. I also found it interesting that the fire was in May 2010 and the tenant paid rent for June 2010 and then withheld rent for July 2010; however, I also note that it was in June 2010 that the landlord issued a Notice to End Tenancy for cause. Further, I did not hear evidence that the tenant made requests for installation of a smoke detector. Therefore, I am rather sceptical that the tenant's primary motive is to have to have the landlord make the units safer for tenants as the tenant indicated during the hearing.

The tenant's monetary claim is based on the allegation the tenant could not use the stove for cooking due to fear of causing another fire. Even if the lack of a smoke alarm is a violation of the Act, I find the lack of a smoke alarm in the rental unit is not the cause of the fire. Rather, the tenant's lack of attention to cooking French fires is the cause of the fire. I find the tenant could still use the stove after the fire as the stove remained functional and the tenant's fears of another fire could be minimized by giving proper attention to cooking food and not leaving the food on the stove unattended. Accordingly, I do not find the tenant's choice to not use the stove is solely attributable to a violation by the landlord and I do not find the tenant has done whatever is reasonable to minimize damages or loss. The tenant's monetary claim is dismissed.

Conclusion

The tenancy has ended and the landlord is provided an Order of Possession effective two (2) days after service upon the tenant. The landlord is authorized to retain the tenant's security deposit and is provided a Monetary Order for \$400.00 to serve upon the tenant.

The landlord's claim for damage to the rental unit is dismissed with leave to reapply.

The tenant's claims for monetary compensation and a rent reduction are dismissed.

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: July 27, 2010.

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Dispute Resolution Officer