



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      LANDLORD, OPR, MND, MNR, FF  
TENANT, MNDC, OLC, ERP, RP, LRE, FF

### Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenants.

The Landlord filed seeking an Order of Possession for unpaid rent, a Monetary Order for unpaid rent and damages to the unit, site or property, to keep the security deposit in partial satisfaction of their claim, and to recover the filing fee for this proceeding from the Tenants.

The Tenants filed seeking a Monetary order owed or compensation for damage or loss under the Act, make emergency repairs for health or safety reasons, suspend or set conditions on the Landlord's right to enter the rental unit, make repairs to the unit, site or property, have the Landlord comply with the Act and to recover the filing fee for this proceeding from the Landlord.

Service of the hearing documents by the Landlord to the Tenants were done by registered mail in accordance with section 89 of the Act. The Tenants confirmed receipt of the Landlord's hearing package.

Service of the hearing documents by the Tenants to the Landlord was done by personal delivery in accordance with section 89 of the Act. The Landlord confirmed receipt of the Tenant's hearing package.

The parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing and in documentary form.

### Issues(s) to be Decided

Landlord:

1. Does the Landlord have grounds to end the tenancy?
2. Are there rent arrears and if so, how much?
3. Are there damages and if so is the Landlord entitled to compensation for the damages?

Tenants:

1. Are the Tenants entitled to compensation for damage or loss under the Act, and if so how much?
2. Are the Tenants entitled to compensation for emergency repairs?
3. Should there be conditions set on the Landlord's right of entry to the rental unit?
4. Has the Landlord complied with the Act?
5. Are there repairs required to the unit and who is responsible for the repairs?

Background and Evidence

This tenancy started on August 1, 2010. Rent is \$1,350.00 per month payable in advance on the 1<sup>st</sup> day of each month. The Tenants paid a security deposit of \$675.00 on July 28, 2010.

The Tenant said she has paid the rent for August, 2010 of \$1,350.00 and the security deposit of \$675.00. She said she provided receipts from the Landlord for these payments in her evidence package and said the cheques were withdrawn from her bank account. The Tenant continued to say that she spend \$250.00 on cleaning supplies, which were needed to clean the rental unit when she moved in. As well the Tenant is claiming \$300.00 for her labour to clean the rental unit. The Tenant said her total monetary claim is \$550.00.

The Tenant continued to say that she has applied for the Landlord to repair the cupboards and doors in the rental unit and she said her husband had to make an emergency repair to a leaking toilet in the unit.

As well the Tenant said the Landlord entered the rental unit when she was away without giving them proper notice. She said a friend was in the unit and she told the Tenant about the incident.

The Tenant concluded by saying that she wants to move out and cancel the tenancy agreement as soon as possible.

The Landlord said that he did issue receipts for the August rent of \$1,350.00 and the security deposit of \$675.00, but both cheques were returned from the bank. He said the August and September, 2010 rent of \$1,350.00 each is unpaid and the security deposit of \$675.00 is unpaid as well.

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The Landlord continued to say the Tenant did not transfer the utilities to their names and he has a bill for \$174.00 for the time the Tenants were in the unit. The Tenant said she would pay the Utility bill.

The Landlord said that he spoke to the Tenant about the returned cheques and that he has not received any replacement cheques or cash payments to date.

The Landlord agreed with the Tenant that there was no move in condition inspection report done, but he provided photographs, which he said were taken just prior to the Tenants moving in. As well, the Landlord provided in his evidence package a receipt date July 22, 2010 for \$70.00 for carpet cleaning. The Landlord said the unit was clean when the Tenants moved in.

The Landlord continue to say that he did go to the rental unit when the Tenant was away as there were people living there who he did not know. He said he did not enter the unit.

The Landlord concluded by saying he wants to end the tenancy and receive the unpaid rent for August and September, 2010 of \$2,700.00, and the Utilities of \$174.00.

## Analysis

Section 46 of the Act states that within 5 days of receiving A 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, a Tenant must either pay the overdue rent or apply for dispute resolution. If a Tenant fails to do either of these things, then under section 46 (5) of the Act, they are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and they must vacate the rental unit at that time.

The Tenant was served the Notice to End Tenancy in person on August 16, 2010. Consequently, the Tenant would have had to pay the amount stated on the Notice or apply to dispute that amount no later than August 21, 2010. The Tenants' did not apply to dispute the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities nor did they pay the unpaid rent by August 21, 2010.

I find that the Tenant has not paid the overdue rent and did not apply for dispute resolution within the time limits. Consequently, I find pursuant to s. 55(2)(b) of the Act that the Landlord is entitled to an Order of Possession to take effect on September 30, 2010. The Tenant said they agree to end the Tenancy early and that they would move out of the rental unit by September 30, 2010.

The Tenants did apply prior to receiving the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities for compensation for loss or damage for cleaning supplies and labor to

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clean the unit on move in, to have repairs to the unit done and to put conditions on the Landlord's right of entry to the unit. After reviewing the evidence and photographs of the rental unit I find the unit was in reasonable conditions on move in and I dismiss the monetary claim \$250.00 for cleaning supplies and \$300.00 of labor by the Tenant, without leave to reapply.

As well, I find that the Tenants has not shown grounds for their claims to make repairs to the unit, to make restrictions on the Landlord's right of entry or that the Landlord did not comply with the Act. I accept the Landlord's photographs of the unit and it looks in reasonable repair. The Landlord said he did not enter the unit since the Tenants moved in and the Tenant evidence is uncorroborated from a guest in the unit. I find the Landlord has complied with the Act. In addition, since the Tenant has requested an early end to the 1years tenancy agreement and the Order of Possession will take effect on September 30, 2010, I dismiss the tenant application without leave to reapply.

Section 26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has the right under this Act to deduct all or a portion of the rent.

The Tenant does not have an Order or the right under the Act to with hold all or a portion of the rent. The Tenant has not paid the unpaid rent, I find that the Landlord is entitled to recover unpaid rent for August in the amount of \$1,350.00, unpaid rent for September, 2010 in the amount of \$1,350.00 and the Utility costs of \$174.00.

As the Landlord has been successful in this matter, he is also entitled to recover from the Tenant the \$50.00 filing fee for this proceeding. The Landlord will receive a monetary order for the balance owing as following:

Rent arrears:	\$ 2,700.00
Utility costs	\$ 174.00
Recover filing fee	<u>\$ 50.00</u>
Balance owing;	\$ 2,924.00



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## Conclusion

An Order of Possession effective on September 30, 2010 and a Monetary Order in the amount of \$2,924.00 have been issued to the Landlord. A copy of the Orders must be served on the Tenant: the Order of Possession may be enforced in the Supreme Court of British Columbia and the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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*.

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