



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

**Dispute Codes**      OPR, MNR, MNSD, FF

### **Introduction**

This hearing was convened by way of conference call to deal with the landlord's application for an Order of Possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, for an order permitting the landlord to retain the security deposit in partial satisfaction of the claim and to recover the filing fee from the tenant for the cost of this application.

The landlord and the tenant both attended the conference call hearing, gave affirmed testimony and were given the opportunity to cross examine each other on their evidence. All testimony provided has been reviewed and is considered in this Decision.

### **Issues(s) to be Decided**

Is the landlord entitled to an Order of Possession for unpaid rent or utilities?

Is the landlord entitled to a monetary order for unpaid rent or utilities?

Is the landlord entitled to an order permitting the landlord to retain the security deposit in partial satisfaction of the claim?

### **Background and Evidence**

The tenancy began on October 1, 2007. Rent in the amount of \$913.00 per month was payable in advance on the first day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$440.00.

The landlord testified that the tenant failed to pay rent in the month of October, 2010 and on October 28, 2010 the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The tenant further failed to pay rent in the month of November, 2010 but complied with the notice to end the tenancy and vacated the residence by the 13<sup>th</sup> of November, 2010.

The landlord further testified that the unit was re-rented on November 22, 2010, and she gave the new tenants one week of free rent. She stated that they actually moved in on the 16<sup>th</sup> of November and she collected \$228.00 rent from those tenants for the last week of the month.

The tenant testified that the landlord refused to fix electrical outlets after repeated requests for those repairs, which required him to run an extension cord to prevent hearing crackling in the walls. He further stated that it took months for the landlord to replace the screen on the door. He stated that he cleaned the rental unit exceptionally well upon vacating, and feels he was justified in not paying the rent due to the landlord's failure to maintain the residence.

### **Analysis**

The *Residential Tenancy Act* states:

**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 a right under this Act to deduct all or a portion of the rent.

I find that the tenant did not have a right under the *Act* to deduct all or a portion of the rent, and had remedies available to him to deal with any breach by the landlord under the *Act*, regulation or tenancy agreement. The tenant chose to not pay rent despite Section 26 (1) of the *Act*, and therefore is required to pay the rent as set out in the tenancy agreement made between the parties.

The landlord is also required to provide evidence that she took steps to mitigate any financial loss, and I find that she did so by renting the unit out again almost immediately after the tenant vacated. The landlord testified that she received \$228.00 from new tenants, and I therefore decline to award the full amount of November's rent.

As for the monetary order, I find that the landlord has established a claim for \$1,598.00 in unpaid rent. The landlord is also entitled to recovery of the \$50.00 filing fee.

### **Conclusion**

For the reasons set out above, I order that the landlord retain the security deposit and interest of \$448.28 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$1,199.72. This order may be filed in the Provincial Court of British Columbia, Small Claims division and enforced as an order of that Court.

The landlord's application for an Order of Possession is hereby 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: November 26, 2010.

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Dispute Resolution Officer