



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes      CNR, MNDC, OPR, MNR, FF

### Introduction

This was the hearing of applications by the tenant and by the landlord. The tenant applied to cancel a Notice to End Tenancy for unpaid rent and requested a monetary order. The landlord applied for an order for possession and a monetary order for unpaid rent. By the date of the hearing the tenant had moved out of the rental unit and the only matters before me were the parties' applications for monetary orders.

### Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent and if so, in what amount?

Is the tenant entitled to a monetary order for compensation for damage or loss and if so, in what amount?

### Background and Evidence

The rental unit is an older house in Vancouver that consists of six legal suites. The tenancy began July 1, 2010 for a six month fixed term. The agreement provided that the tenant must move out at the end of the term. Monthly rent was \$785.00 payable on the first of each month. The tenant paid a security deposit of \$390.00 on June 5, 2010.

The tenant testified that on June 5, 2010 she was told by D.M., the manager of the rental property that renovations were mostly complete and the remaining work to her suite would be the replacement of cupboards in a few months time.

The tenant testified that a week after her tenancy began, without warning to her, the landlord started work in her rental unit creating a large hole in one wall and a large hole in the ceiling. There was drywall dust in her unit. She said that the work continued for most of July and she was forced to stay with friend or house sit because her suite was uninhabitable due to her allergy to drywall dust. The tenant also complained about problems with the smoke alarm system in the building and the numerous false alarms that occurred when the system was being upgraded.

The tenant also complained that she was not given proper notice when her rental unit was entered for repairs to proceed.

On November 26, 2010 the tenant gave the landlord written notice that she would be moving from her apartment on December 31, 2010. On December 1, 2010 the tenant wrote to the landlord and said she would vacate her apartment on December 16, 2010. She asked that the landlord apply her security deposit to December rent because of her current financial situation and her need to come up with funds for a rental deposit and moving expenses. On December 2, 2010 the tenant sent a second letter wherein she said that she was not able to pay a full month's rent for December because of her financial situation. She then stated her complaints about repairs in her rental unit and the lack of quiet enjoyment that resulted. The landlord served the tenant with a 10 day Notice to End Tenancy dated December 3, 2010.

The tenant applied on December 8, 2010 to dispute the Notice to End Tenancy. In addition she claimed the sum of \$1,145.00. She stated her claim to be in the amount of one month's rent and the amount of her security deposit, incorrectly said to be \$765.00 and \$380.00 respectively.

The tenant moved out of the rental unit on December 15, 2010. The landlord testified that the rental unit was left in an acceptable condition and he had no claims for cleaning or repairs.

The landlord testified that in July he was having work done to the heating system for the rental property and due to unforeseen circumstances it was necessary in order to complete the work to gain access to pipes in the tenant's unit; dry wall was removed to access the piping. The landlord testified that the work took one week, contrary to the tenant's evidence the work began on July 7<sup>th</sup> and was completed on July 15<sup>th</sup>.when D.M. re-painted a wall in the tenant's apartment.

The landlord disputed the tenant's claim to have suffered a loss of quiet enjoyment due to the work in her suite. D. M. Said that the rental unit was so filled with boxes that it was difficult to move around in the unit and there was no place for the tenant to sleep. She said that boxes had to be moved to allow the tradesmen access to the work areas in the suite. She also testified that in every case the tenant was given proper written notice of entry to her unit and work to be done.

The tenant disputed the landlord's statement of the duration of the work and denied that her suite could not be occupied. She said that she had a fold-out bed to sleep on. And she reiterated that the landlord did not give proper notice of entry into her apartment.

## Analysis and Conclusion

The tenant was not entitled to withhold rent for December and the landlord was under no obligation to apply the tenant's security deposit to December's rent. I find that the landlord is entitled to a monetary award in the amount of \$785.00 for December rent. The landlord is entitled to recover the \$50.00 filing fee for a total award of \$835.00.



# Dispute Resolution Services

Page: 4

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There was no basis for the tenant to dispute the Notice to End Tenancy for unpaid rent. She has moved out and this part of her application is dismissed.

With respect to the tenant's claim, I accept and prefer the landlord's evidence that the work in the tenant's unit took place from July 7<sup>th</sup> to July 15<sup>th</sup>, a period of nine days. The landlord said that the tenant did not lose quiet enjoyment because, in the landlord's estimation, the suite was not habitable and was used for storage at that time. I do not agree. The tenant testified that she is affected by drywall dust and the work in her unit was admittedly extensive. I find that the tenant was prevented from using her unit, either for occupancy or for the purpose of unpacking for the nine day period. I find that she is entitled to compensation in the amount of \$25.00 per day for the nine day period, based on the per diem rental amount. I award the tenant the sum of \$225.00. The tenant was only partially successful in her application and I award the tenant \$25.00 of her \$50.00 filing fee for her application for a total award of \$250.00.

Pursuant to section 72 of the *Residential Tenancy Act* I set off the tenant's award against the award in favour of the landlord leaving a net award to the landlord in the amount of \$585.00. I order that the landlord retain the security deposit of \$390.00 in partial satisfaction of the award and I grant the landlord a monetary order under section 67 for the balance of \$195.00. This order may be registered in the Small Claims Court and enforced as an order of that court.

Dated: December 31, 2010.

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