



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

### **Dispute codes**

For the Tenant MNDC, OLC, RP, LRE, O

For the Landlord OPC, FF

### **Introduction**

This hearing was convened in response to cross-applications by each party.

The tenant filed on March 09, 2011 for Orders under the *Residential Tenancy Act (the Act)* as follows:

1. A Monetary Order for compensation for damage and loss: loss of quiet enjoyment - \$300 - Section 67
2. An Order for the Landlord to Comply with the Act - Section 70
3. An Order for the landlord to make repairs to the unit. - Section 62
4. An Order suspending or setting conditions on the landlord's right to enter the rental unit – Section 70

The landlord filed on March 11, 2011 for Orders under the *Residential Tenancy Act (the Act)* as follows:

1. An Order of Possession / undisputed Notice to End - Section 55(2)(b);
2. An Order to recover the filing fee for this application - Section 72.

The tenant's application does not dispute the landlord's Notice to End. There are no amendments to either application. The burden of proof rests upon the tenant in respect to their claim for damage and loss.

Both applicants attended the conference call hearing and were given opportunity to make submissions, ask questions, present witnesses and provide sworn testimony.

Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

**Issue(s) to be decided**

Is the landlord entitled to an Order of Possession?

Is the tenant entitled to the monetary amount claimed?

Should the landlord be Ordered to comply with the Act, or to make repairs to the unit?

Should the landlord's right to enter be suspended or made conditional?

**Background and evidence**

The tenant occupies a rental unit along with three other co-tenants.

The landlord provided the tenant with a One Month Notice to End Tenancy for Cause on February 28, 2011. The tenant did not file an application to dispute the Notice to End and does not dispute the notice and testified that she is vacating by March 31, 2011 in accordance with the effective date of the Notice to End.

The tenant claims that during the tenancy the landlord has repeatedly entered her suite without notice by herself and with other individuals; and, has engaged in conduct toward the tenant which the tenant describes as "abusive": insulting her, shouting at her, and making false accusations and threats toward the tenant – all of which the landlord denies doing. The tenant describes one incident in which the landlord purportedly entered the rental unit, unannounced, seemingly angry, and in the company of a middle aged male and began shouting and demeaning the tenant. The landlord denies the incident. The tenant claims \$300 in this regard.

The tenant provided two (2) witnesses

**Witness 1 – TH – affirmed testimony.**

The witness testified that<sup>5</sup> on one accession during the tenancy the landlord was approached for keys and the landlord stated that they did not have to give the tenant keys. In the same exchange the landlord was asked for a receipt for the rent and the landlord stated that they did not have to give a receipt, but later conceded and provided one. The witness claims that on March 02, 2011 they were in attendance when the landlord entered the suite unannounced and engaged in purportedly harassing behaviour toward the tenant. *The landlord denies the testimony of the witness.*

Witness 2 – KS – affirmed testimony

The witness resides in another rental unit managed by the landlord on the same residential property. The witness testified that the landlord shows up unannounced, stating that it is her right to do so as it is her place. The tenant also testified that the landlord has generated false rumours of drug use by the witness, and has told the witness that they are a, “welfare bum”. The witness also confirmed that they were one of 4 signatories to a letter to the landlord dated February 11, 2011 in which they requested of the landlord to stop entering their rental unit unannounced. *The landlord denies the testimony of the witness.*

The landlord provided a witness.

Witness 1- AF- affirmed testimony

The witness provided that, in their experience, the landlord always calls ahead before showing the rental suite, and has not entered the suite unannounced.

**Analysis**

On the preponderance of the evidence and the testimony of both parties and their witnesses, and on the balance of probabilities I have reached a decision.

As the tenant has not disputed the landlord’s Notice to End, the landlord is entitled to an **Order of Possession**, and I will so order in accordance with the landlord’s Notice to End. As the landlord has been successful in their application, **I grant** the landlord recovery of their filing fee in the amount of **\$50**.

On a balance of probabilities, I prefer the tenant’s evidence in respect to their claim of loss of quiet enjoyment. I find that the landlord, on more than one occasion likely engaged in entering the tenant’s suite without notice to enter as required by the Act, resulting in a disturbance to the tenant and a breach of the tenant’s right to reasonable privacy. As a result, **I find** it appropriate to grant the tenant **\$300** for loss of quiet enjoyment, and I will so order. The calculation of the tenant’s monetary order will be offset by the landlord’s entitlements as follows;

Tenant’s entitlement for loss of quiet enjoyment	\$300.00
Filing fee for the cost of landlord’s application	-50.00
<b>Total Monetary Award to tenant</b>	<b>\$250.00</b>

### **Conclusion**

I grant an **Order of Possession** to the landlord **effective March 31, 2011**. This Order must be served on the tenant. Should the tenant fail to comply with the Order, the Order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

**I grant** the tenant a monetary order under Section 67 of the Act for the amount due of **\$250**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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*.