



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## DECISION

Dispute Codes      OPR, MNR, FF  
                             CNC, CNR, RR

### Introduction

This hearing dealt with cross applications by the landlord and tenant. The landlord's application is for an order of possession for unpaid rent, a monetary order for unpaid rent and recovery of the filing fee. The tenant's application is to cancel a notice to end tenancy for cause, to cancel a notice to end tenancy for unpaid rent, a monetary order for compensation for damage or loss and to allow the tenant to reduce rent for repairs. Both parties participated in the conference call hearing.

This matter was reconvened from the original hearing date of February 24, 2011 until March 14, 2011 at 2:00PM to allow both parties the opportunity to submit additional evidence.

### Issue(s) to be Decided

Is either party entitled to any of the above under the Act.

### Summary of Background and Evidence

This tenancy started April 24, 2008 with monthly pad rent of \$325.00. On December 30, 2009 the landlord served the tenant a 10 Day Notice to End Tenancy for Unpaid Rent.

The landlord testified that in 2009 the tenant started to fall behind on her monthly pad payments. The landlord then entered into an agreement with the tenant for a payment plan however in 2011 the tenant stopped making the additional \$75.00 per month payment that had been set up to cover the rent arrears. The landlord stated that they had been charging a \$25.00 late fee for each month the payment was late or not in full however the tenancy agreement does not specify that the landlord may make such a charge.

The landlord has submitted a number of letters that have been sent to the tenant to make further arrangements to settle the amount of the unpaid rent. The landlord stated that when the tenant did not respond or pay the rent owed, a 10 day notice to end

tenancy for unpaid rent was served on the tenant. The landlord on February 1, 2011 gave the tenant a 10 day notice reflecting that she was \$900.00 in arrears.

The landlord in this hearing stated that his most recent submission reflects the tenant owing \$750.00 in rent arrears however there was an accounting error and that as of this date the tenant owes the landlord \$425.00 in unpaid pad rent.

The tenant testified that she does not believe she is behind in her rent at this point in time however the tenant has not been able to provide evidence of payments she believes to be missing from the landlord's records. The tenant stated that she believed the payment plan to be in effect for one year and at the end of that year her rent would be up to date.

The tenant in this application has brought up concerns related to her electrical, water quality and septic tank. The tenant stated that there was a problem with the fuses in the electrical box and the landlord maintains that the electrical issues in question are the tenant's responsibility as the issue occurred at the tenant's trailer. The landlord stated that BC safety has checked the electrical boxes for the park and that they are in compliance.

The tenant stated that the residents have not been kept apprised of the water quality concerns and the new water system being installed. The landlord testified that in November 2009 the park was put on a 'boil water' status and this status remains in place until the new water system is completed later in 2011.

The tenant testified that after purchase of her mobile home in May 2008 she discovered that her toilet would not flush or her bathtub drain. The tenant called in a plumber and the problem was not resolved. The tenant then called in a second plumber and the problem was still not resolved. The tenant stated she then contacted the park owner who advised her to have her septic tank pumped out which the tenant did and the problem was still not resolved. The tenant stated that she then hired two additional plumbers to come address the issue yet the problem remained unresolved. The tenant then contacted the park manger, who in turn contacted the park owner who instructed the park manager to have the drain line from the tenant's septic tank checked.

The tenant stated that the line from the tenant's trailer to the park's leech field was kinked and it was only after the line was dug up and replaced by the park that the tenant's plumbing issues were resolved. The landlord's agent verified that the park had replaced the line and that all lines out from a tenant's mobile home are the park's responsibility to repair or maintain. The tenant stated that it was very stressful that for 54 days she had to live with a toilet that often did not properly function and the tenant feels very strongly that the landlord should compensate her for this concern.

### Analysis

Based on the documentary evidence and testimony of the parties I find that the landlord does not have entitlement to an order of possession for unpaid rent as the landlord has not provided the tenant with an accurate accounting of what rent was potentially owed the landlord. The tenant as a result, has not had the opportunity to appropriately address any rent shortfall due to the inconsistent records of the landlord. Therefore, to allow the landlord to end a tenancy on not only a disputed but unknown or incorrect amount of rent owed would reflect bias in favour of what has been very inconsistent evidence from the landlord.

I therefore allow the tenant's application and set aside the landlord's 10 Day Notice to End Tenancy for Unpaid Rent dated February 3, 2011 with the result that the tenancy continues uninterrupted. The landlord's application is hereby dismissed without leave to reapply.

As the landlord has not been successful in their application they are not entitled to recovery of the \$50.00 filing fee.

In regards to the tenant's application for compensation I find that the tenant is not entitled to compensation for the electrical issue as the issue was with the tenant's electrical system and not the park's electrical system.

I find that the park is actively taking steps towards upgrading and replacing the water system for the entire park and that the appropriate authorities are aware that the park is under a 'boil water' advisory, therefore the tenant is not entitled to compensation for this matter.

Based on the documentary evidence and testimony of the parties I do however find that the tenant is entitled to some level of compensation for length of time it took for the septic system to be repaired. I recognize that the landlord did eventually make the required repairs but I find that there was a significant delay which caused distress for the tenant. The tenant after having two plumbers unable to repair the problem, was directed by the park to have the septic tank pumped with no results. The tenant then hired two additional plumbers to try to address the matter, which remained unresolved, before the park took action.

While the tenant had the option of applying for dispute resolution in order to seek an order instructing the landlord to complete repairs on the septic system in a timely manner, or to seek a reduction in rent for repairs, services or facilities agreed upon but not provided, there is no evidence that they did so. Accordingly, I find that the tenant has established entitlement to compensation in the limited amount of \$540.00, calculated on the basis of \$10.00 per day for 54 days.

I find that the tenant has established a claim for \$540.00 in compensation.

As the landlord in the hearing stated that the tenant, as of March 15, 2011 owed the landlord \$425.00 in unpaid rent, the tenant's award will be offset by this amount resulting in a balance of \$115.00 compensation to the tenant.

### Conclusion

I therefore allow the tenant's application and set aside the landlord's 10 Day Notice to End Tenancy for Unpaid Rent dated February 3, 2011 with the result that the tenancy continues uninterrupted.

I find that the tenant has established a monetary claim for **\$115.00**.

A monetary order in the amount of **\$115.00** has been issued to the tenant and a copy of it must be served on the landlord. If the amount is not paid by the landlord, the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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*.

Dated: March 15, 2011

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Residential Tenancy Branch