



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## DECISION

Dispute Codes      For the Landlord: OPR, MNR, FF  
For the Tenant: RP, ERP, CNR, MNDC

### Introduction

This hearing dealt with Cross Applications for Dispute Resolution.

The Landlord applied for a monetary order for unpaid rent and an order of possession.

The Tenant applied to cancel a notice to end tenancy and for an order to have the Landlord complete repairs, to comply with the Residential Tenancy Act, and for a monetary order.

The Landlord and the Tenant appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

### Issue(s) to be Decided

Has the Tenant breached the *Residential Tenancy Act* (the “Act”) or tenancy agreement, entitling the Landlord to an order for monetary relief and for an order of possession?

Is the Tenant entitled to cancel a notice to end tenancy for unpaid rent, an order for monetary compensation, an order for the Landlord to complete repairs and to comply with the Residential Tenancy Act?

### Background and Evidence

This tenancy began on July 1, 2009, on a month to month basis, monthly rent is \$2,000.00 and there was no security deposit paid.

There is no written tenancy agreement between the parties and further, there is no agreement as to the tenancy terms, other than the monthly rent.

The evidence and testimony shows that there are three owners of the rental unit, but only one of the owners was listed as Landlord in the cross applications. Therefore, the Decision will reflect one Landlord.

The Tenant submitted into evidence the following documents:

- A written summary of the Tenant's claim;
- Witness statements;
- A written listing of repair requests from the Tenant to the Landlord, dated February 20, 2010;
- Invoice for the fence repair and replacement;
- Statement for painting the walls and trim in babies' bedroom;
- Monthly receipts for horse boarding from November 2009 to the present;
- A statement from a social worker concerning the Tenant's granddaughter;
- Posting of the rental unit for re-rent, on Craigslist; and
- Copies of photos of the rental unit.

The Landlord has submitted into evidence the following document:

- A 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice")

Pursuant to the Rules of Procedure, the Landlord proceeded first in the hearing to explain why the Notice had been issued.

The Landlord gave affirmed testimony and supplied evidence that the Tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent on February 9, 2011, in person. The Notice stated the amount of unpaid rent was \$3,200.00 and the stated effective move out date was listed as February 18, 2011. I note the effective date indicated on the Notice is ineffective and automatically corrects under the Act to February 19, 2011.

The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explained the Tenant had five days to dispute the Notice.

The Landlord further testified that the Tenant failed to pay rent on March 1, 2011, and currently owed the amount of \$5,200.00 as unpaid rent. The Tenant acknowledged this amount.

The Tenant's claim for an order cancelling the Notice, also claims for an order requiring the Landlord to comply with the Act to make repairs and emergency repairs to the rental unit and for an order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement.

In support of her application, I heard testimony from the Tenant that the rental unit was a four bedroom house on 2 ½ acres which she agreed to rent so that she could board her horses in order to hire them out to potential riders.

The Tenant further testified that there are three owners of the property, and that upon agreeing to rent the premises, she met with one of the owners who, at the time of the hearing, was in another country. The Tenant testified that the owner agreed to fix the fence, to put up gates and to erect a lean to for the horses, but has yet to complete any of these items.

The Tenant submitted that due to the Landlord's failure to provide the gates, fence and lean to, her horses escaped, early in the tenancy, and she has had to board them out since November 2009, at a cost of \$600.00 per month for the three horses. Additionally the Tenant testified that she and her family went without water for days at the time.

The Tenant estimated that she has lost income in the amount of \$5000.00 to \$6,000.00 for not being able to conduct her horse-riding business and stated her costs to board her horses to be \$9,600.00.

The Tenant testified she herself had the fence fixed due to the Landlord's failure to repair the fence and that the Landlord has not reimbursed her the amount of \$750.00.

The Tenant stated that she has made repeated requests to the Landlord to repair the home, including replacing the refrigerator, repair the exposed wires, replace the smoke alarms, repair the holes in the walls, which present a danger to her grandchild, replace and repair outlet covers and light fixtures, repair the balcony railing, repair the toilet, treat the mould in the upstairs shower and repair the shower stall. Regarding the mould, the Tenant stated that she has been unable to use the upstairs shower since moving into the rental unit, as it is covered with a plastic sheet and the walls are covered with the mould, creating a health hazard to her and her family of four children and one grandchild.

The Tenant stated that it was only after she moved in that she discovered there had been a grow-op in the rental unit and that the Landlord deliberately hid this information from her. The Tenant testified that this was the source of the mould problem.

The Tenant submitted that the Landlord refused to fix the fireplace, saying that it was too expensive for her to use.

Among the items the Tenant stated she corrected are installing a front step, buying a shower head, painting the baby's room, in the amount of \$300.00, and repairing the fence.

The Tenant submitted that the Landlord finally replaced the non-working refrigerator with a used refrigerator, which also didn't work. The Tenant testified that she has lost at least \$300.00 in meat costs.

In response, I heard testimony from the Landlord that the grow op was in the back of the house, and therefore not an issue for the Tenant.

In response, the Landlord submitted that the owners have not been aware of the repair issues for very long, estimated to be around December 2010, and that the Tenant has been uncooperative in allowing access to the rental unit for repair purposes. The Landlord further submitted that any repair requests have been timely attended to.

The Landlord denied promising the Tenant a fence, gates or a lean to. When queried concerning the current listing for the rental unit, which stated the property was "Perfect for Horses," the Landlord insisted that did not include fencing, gates or a lean to.

### Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

### Landlord's Application

Under section 26 of the Act, the Tenant is required to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so.

Where the Tenant fails to pay rent when due, the Landlord may serve the Tenant with a 10 Day Notice for Unpaid Rent. Upon receipt of the Notice, the Tenant must pay the outstanding rent or dispute the Notice within five days. In this case, I find that the Tenant neither disputed the Notice within five days nor paid the outstanding rent.

Upon hearing from the parties, I am satisfied that the Tenant owed the Landlord rent when the Notice was issued, that she did not pay all or any of the rent owed to the Landlord within five days of receiving the Notice and the Tenant did not establish that she had the legal right to withhold the rent owed. Therefore, I find the tenancy has ended for the Tenant's failure to pay rent and the Landlord is entitled to regain possession of the rental unit. The Landlord is provided with an Order of Possession effective **6 days** after service on the Tenant.

This order may be filed in the Supreme Court and enforced as an order of that Court.

I find that the Landlord has established a total monetary claim of **\$5,250.00** comprised of unpaid rent of **\$5,200.00** and the **\$50.00** fee paid by the Landlord for this application.

### Tenant's Application

In dealing with the agreed upon terms and services in a tenancy agreement, the onus is on the Landlord to prove the terms and agreed upon at the commencement of the tenancy. The Landlord did not prepare a tenancy agreement as required under Section 13 of the Act, and therefore is unable to establish the terms agreed upon with the Tenant. Without that proof and in the absence of testimony from the owner who arranged the tenancy, the Tenant's evidence will be the acceptable evidence.

I find it more likely than not, due to the Landlord's current advertisement of the rental unit as being "perfect for horses," that the Tenant was promised, but not provided, proper fencing, gates and a lean to in the tenancy agreement in order to keep her horses on the premises. Therefore, I find that the Tenant established that she has been deprived of her ability to use the rental unit and premises as agreed for her horses and has been deprived of an agreed upon facility and that the Landlord has very clearly breached several sections of the *Residential Tenancy Act*.

Section 27 of the *Act* states that a landlord must not terminate or restrict a service if it is essential to the tenant's use of the rental unit as living accommodation. I find that the Tenant clearly entered into this tenancy intending to use the premises to house her horses and run a horse riding business, which leads me to conclude that gates, fences and a lean to were essential to the Tenant's use. Therefore, although I am unable to award the Tenant reimbursement of her horse boarding expenses due to the lack of mitigation, I find the Tenant is entitled to a monetary order for the Landlord's failure to provide these fixtures and I **award** the Tenant compensation of **\$300.00** per month for this loss of use of her rental unit and diminished value for a total of **\$4,800.00**. (Sixteen months, November 2009 through February 2011).

I find the Tenant submitted evidence that she had the fence repaired and in light of the Landlord's failure to provide proper fencing, I **award** the Tenant the amount of **\$750.00**, pursuant to Residential Tenancy Policy Guideline 22.

The Landlord is required under section 32 of the Residential Tenancy Act to provide and maintain a rental unit which complies with health, safety and housing standards and make it suitable for occupation. I do not accept the Landlord's statements that he was unable to enter the premises to repair the rental unit. I find that on a balance of probabilities through the photographic evidence and the Tenant's written demand to the Landlord, dated February 20, 2010, that the Landlord did not take sufficient action necessary to remedy and repair the damaged walls, the shower stall, the mould correction, the refrigerator problems, the exposed wires, balcony railing and

dishwasher, among others, and I find this insufficient response caused the Tenant to suffer a loss of use and enjoyment of the rental unit.

I accept that the Landlord's lack of response and failure to repair has diminished the value of the tenancy by \$250.00 per month and I **award** the Tenant compensation of **\$250.00** per month from February 2010, through February 2011, in the amount of **\$3,250.00**.

I accept the Tenant's testimony that she lost food from a malfunctioning refrigerator and I **award** her the sum of **\$300.00**.

I decline to award the Tenant \$300.00 for painting the baby's room as I find the lack of painting to be non-essential.

I find that the Tenant failed to submit proof of her loss of income from her horse riding business and I decline to award her compensation for the same.

### Conclusion

The Landlord is granted an order of possession effective six days after service upon the Tenant.

The Landlord has established a monetary claim of **\$5,250.00** for unpaid rent and the filing fee and that the Tenant has established a monetary claim of **\$9,100.00**, comprised of loss of use and diminished value of her rental unit for a total of **\$4,800.00**, **\$750.00** for fence repair, **\$3,250.00** for the Landlord's failure to maintain the rental unit and **\$300.00** for meat costs.

I order the Landlord's monetary claim to be offset against the Tenant's monetary claim and I grant the Tenant a monetary order for the balance due of **\$3,850.00**.

This order may be filed in the Provincial Court of British Columbia, Small Claims Division 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 07, 2011.

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Residential Tenancy Branch