



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

### **Dispute Codes**

Landlord: OPR, MNR, MNSD, MNDC, FF

Tenant: MT, CNR, MNR, MNDC, OLC, ERP, RR

### **Introduction**

This hearing was convened by way of conference call to deal with applications filed by the landlord and by the tenant. The landlord has applied 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 keep all or part of the security deposit or pet damage deposit; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application.

The tenant has applied for more time to make an application to cancel a notice to end tenancy; for an order cancelling a notice to end tenancy for unpaid rent or utilities; for a monetary order for the cost of emergency repairs; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order that the landlord comply with the *Act*, regulations or tenancy agreement; for an order that the landlord make emergency repairs for health or safety reasons; and for an order permitting the tenant to reduce rent for repairs, services or facilities agreed upon but not provided.

A hearing was conducted by a Dispute Resolution Officer on November 22, 2010 and a Decision was rendered that day which granted an Order of Possession in favour of the landlord effective December 1, 2010 and an order permitting the landlord to retain the security deposit in partial satisfaction of the claim, in addition to a monetary order in favour of the landlord in the amount of \$950.00. Upon hearing the parties at a Judicial Review hearing in the Supreme Court of British Columbia on January 4, 2011, the Court ordered that the Decision dated November 22, 2010 is set aside and remitted the matter back to the Residential Tenancy Branch for a re-hearing of both applications filed by the parties on an expedited basis. The order also contained the following provisions:

- The tenant may continue to live in the suite until the rehearing;

- The tenant is to deliver to the landlord by 12:00 p.m. on January 7, 2011 the sum of \$1,200.00 by cash, certified cheque or by cheque from a government department made payable to the landlord, representing rent for the months of December, 2010 and January, 2011;
- The tenant is to pay rent on the 1<sup>st</sup> day of each month until a decision is rendered on this re-hearing;
- Rent is to be collected by the landlord only;
- That there is to be no communication between the tenant and the landlord or the landlord's family or any other tenant;
- That the landlord provide the tenant with a space heater on January 4, 2011 to heat the suite until the re-hearing.

The landlord attended the conference call hearing, gave affirmed testimony and provided an evidence package in advance of the hearing. Despite being served with a notice of hearing by registered mail on April 4, 2011 by the Residential Tenancy Branch, the tenant did not attend. The tenant's application is hereby dismissed without leave to reapply.

### **Issue(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 a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Is the landlord entitled to retain all or part of the security deposit or pet damage deposit in full or partial satisfaction of the claim?

### **Background and Evidence**

The landlord testified that this month-to-month tenancy began on or about May 1, 2010 and the tenant still resides in the rental unit. Rent in the amount of \$600.00 per month is payable in advance on the 1<sup>st</sup> day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$300.00.

The landlord further testified that the tenant paid all rent from the start of the tenancy until August, 2010, but failed to pay any rent for the months of September and October. The landlord is not claiming a monetary order for both of those months because the kitchen sink required replacement, and the landlord has given the tenant a one month benefit because of those repairs. He further testified that pursuant to the Order of the Supreme Court of British Columbia, the tenant paid \$600.00, and then paid another

\$600.00 in March, 2011. The tenant has not paid any rent for the months of February, March and April, 2011.

On October 11, 2010, the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, a copy of which was provided in advance of the hearing, by posting a copy of that notice on the door of the rental unit. The notice states that the tenant has failed to pay rent in the amount of \$600.00 that was due on October 1, 2010 and contains an expected date of vacancy of October 23, 2010.

### **Analysis**

In the circumstances, and in the absence of any evidence to the contrary, I find that the tenant was deemed to have been served with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on October 14, 2010. The tenant has not paid the outstanding rent, and has not complied with the Order of the Supreme Court of British Columbia. I further find that the tenant is further in arrears for rent since the order of the Supreme Court was made.

The *Residential Tenancy Act* states that if a tenant fails to pay rent when it is due, the landlord may serve the tenant with a notice to end the tenancy. The tenant has 5 days from the date the notice is deemed served on the tenant to pay the rent in full or apply for dispute resolution to dispute the notice. If the tenant does neither, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice. In this case, the tenant applied for dispute resolution to dispute the notice on November 1, 2010 which is well beyond the 5 days provided for in the *Act*. The tenant also applied to extend the time within which he can bring his application to cancel the notice to end tenancy, but has not attended the hearing to provide evidence on why he requires more time to dispute the notice. Therefore, the tenant's application must be dismissed, and I find that the landlord is entitled to an Order of Possession.

With respect to the monetary claim, I find that the tenant is in arrears of rent in the amount of \$3,000.00 for October and November, 2010 as well as for February, March and April, 2011 and the landlord has established a claim for that amount. The landlord is also entitled to recovery of the \$50.00 filing fee for the cost of this application.

### **Conclusion**

For the reasons set out above, the tenant's application is hereby dismissed in its entirety.

I further grant an Order of Possession in favour of the landlord on 2 days notice to the tenant. The tenant must be served with the Order of Possession. If the tenant is served with the Order of Possession and fails 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 order that the landlord retain the security deposit in the amount of \$300.00 and I grant a monetary order in favour of the landlord for the balance due of \$2,750.00. 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: April 14, 2011.

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Residential Tenancy Branch