



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, CNR, MNDC, RR, O

### Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The Tenant applied on August 15, 2011 for:

1. An Order cancelling a Notice to End Tenancy – Section 55;
2. A Monetary Order for compensation or loss - Section 67;
3. An Order allowing the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided – Section 65; and
4. Other.

The Landlord applied on August 18, 2011 for:

1. An Order of Possession - Section 55;
2. An Order for unpaid rent or utilities - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions.

### Preliminary Matter

The Tenant stated that the Landlord did not serve her with its application for dispute resolution and notice of hearing and requested an adjournment in order to obtain, review and respond to the application. The Landlord objected to the adjournment. The adjournment was not granted as the Landlord satisfied the requirements under Section 89 of the Act by serving the Tenant with the application for dispute resolution and notice

of hearing by registered mail through the provision of accepted written and oral evidence. Further, the Tenant was aware that the Landlord would be making an application for an order of possession and the monetary order claiming unpaid rent.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the Landlord entitled to an Order of Possession?

Is the Landlord entitled to the monetary amounts claimed?

Is the Tenant entitled to the monetary amounts claimed?

Background and Evidence

The tenancy began on July 6, 2011. Rent in the amount of \$1,150.00 is payable in advance on the first day of each month. At the outset of the tenancy, the Landlord collected a security deposit from the Tenant in the amount of \$575.00. The Tenant failed to pay rent for the month of August 2011 and on August 8, 2011 the Landlord served the Tenant with a notice to end tenancy for non-payment of rent by posting the Notice on the door. The Tenant has not paid the rent for September and has not moved out of the unit. The Landlord claims unpaid rent for August and September 2011 in the amount of \$2,300.00. The Tenant states that rent has been unpaid due to banking problems.

The Tenant states that upon entering into the tenancy agreement, she was informed that there would be some work done on the roof of the building, however the Tenant states that work has been done over the month of August 2011 on the cement balconies above and beside her unit. The Tenant states that the noise of banging and drilling is constant and daily and has disturbed her quiet enjoyment of the unit. The Tenant claims the amount of \$650.00 in compensation for this loss. The Landlord states that the work done on the balconies only occurred twice a week and then never beyond 5:00 p.m. The Landlord provided a letter from another tenant concerning this work and this letter notes that the work has taken place on some occasions past 6 p.m. at night.

### Analysis

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. While the Tenant has filed an application disputing the Notice, I find that banking problems does not constitute a valid reason for the non-payment of rent. The Tenant has not paid the outstanding rent and I find the Notice to be validly served and with a valid purpose. Given these facts, I find that the Landlord is entitled to an **Order of Possession**. I also find that the Landlord has established a monetary claim for **\$2,300.00** in unpaid rent. The Landlord is entitled to recovery of the \$50 filing fee, for a total entitlement of **\$2,350.00**.

Section 28 of the Act provides that a tenant is entitled to quiet enjoyment of the rental unit. Although the Landlord denies that the work done has been as frequent or as long as the Tenant claims, the Landlord's supporting evidence contradicts the Landlord's evidence. Accordingly, I prefer the Tenant's evidence of noise and duration and find that the Tenant's right to quiet enjoyment has been breached by the work and that the Tenant is entitled to compensation. I find however that the amount of compensation claimed by the Tenant exceeds a reasonable amount and I therefore find that the Tenant is entitled to a more reasonable amount of **\$150.00**.

The Landlord has been awarded \$2,350.00 and currently holds a \$575.00 security deposit. I order the Landlord to retain this sum in partial satisfaction of his claim, leaving a balance of \$1,775.00. The Tenant has been awarded \$150.00. Setting off the awards against each other leaves a balance of **\$1,625.00** payable by the Tenant to the Landlord and I grant the Landlord a monetary order under section 67 for that sum.

### Conclusion

**I grant** an Order of Possession to the Landlord. The Tenant must be served with this **Order of Possession**. 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 order** that the Landlord retain the **deposit** and interest of \$575.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the amount of **\$1,625.00**. 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*.

Dated: September 07, 2011.

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Residential Tenancy Branch