



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

OPR, MNR, ET, FF

### Introduction

This hearing was convened in response to cross applications.

The Landlord filed an Application for Dispute Resolution, in which the Landlord has made application for an Order of Possession for Unpaid Rent, an early end to the tenancy, a monetary Order for unpaid rent, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

The Tenant has filed an Application for Dispute Resolution in which the Tenant applied for an Order requiring the Landlord to make repairs and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

### Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to an Order of Possession for unpaid rent; whether the Landlord is entitled to a monetary Order for unpaid rent; whether there is a need to end this tenancy early; whether there is a need to order the Landlord to make repairs to the rental unit; and whether either party is entitled to recover the fee paid to file their Application for Dispute Resolution, pursuant to sections 32, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The Landlord and the Tenant agree that this tenancy began on June 01, 2011; that the Tenant was required to pay monthly rent of \$1,300.00 on the first day of each month; and that the Tenant was not required to pay rent for June and July of 2011 in lieu of repairs that the Tenant was making to the rental unit.

The Landlord and the Tenant agree that the Tenant did not pay any rent for August or September of 2011.

The Landlord and the Tenant agree that the Landlord mailed a Ten Day Notice to End Tenancy for Unpaid Rent to the Tenant. Neither party submitted a copy of the Notice to End Tenancy as evidence. The Tenant stated that he did not have his copy of the Notice to End Tenancy with him so he is unable to confirm the contents of the Notice.

The female Landlord requested an early end to the tenancy on the basis that rent has not been paid for two months.

The Landlord and the Tenant agree that they entered into an agreement at the start of the tenancy regarding repairs to the rental unit. Part of the agreement was that the Tenant would install moulding in the rental unit. The male Landlord stated that he originally agreed to supply the mouldings but there was an understanding that the Tenant would purchase the mouldings and deduct it from the rent if the Landlord did not supply the mouldings. The Tenant stated that he understood the Landlord would supply the mouldings; that he never agreed to purchase the mouldings; and that he does not wish to incur the cost of purchasing the mouldings.

The Landlord and the Tenant agree that part of the agreement to repair the rental unit was that the Tenant would replace two broken windows in the rental unit. The male Landlord stated that the agreement was that the Tenant would purchase the materials needed to replace the windows and deduct it from the rent. The Tenant stated that the agreement was that he would replace the windows if he "was able" and that he subsequently realized that he could not afford to replace the windows.

### Analysis

On the basis of the undisputed evidence presented at the hearing, I find that the Tenant entered into a tenancy agreement with the Landlord that requires the Tenant to pay monthly rent of \$1,300.00 on the first day of each month, and that he did not pay rent that was due for August and September of 2011. Section 26(1) of the *Act* requires tenants to pay rent to their landlord. As he is required to pay rent pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$2,600.00 in outstanding rent to the Landlord.

If rent is not paid when it is due, a landlord may end a tenancy by serving a Notice to End Tenancy, in the proper form, to the Tenant. I find that I have insufficient evidence to conclude that the Landlord served the Tenant with a Notice to End Tenancy that complied with section 52 of the *Act*. In reaching this conclusion I was influenced by the fact the Landlord did not submit a copy of the Notice to End Tenancy to the Residential Tenancy Branch, so I did not have the opportunity to view the Notice. I was further influenced by the Tenants testimony that he did not have his copy of the Notice with him at the hearing and I could not, therefore, rely on his description of the Notice to End Tenancy.

As I have insufficient evidence to conclude that the Landlord served the Tenant with a Notice to End Tenancy that complied with section 52 of the *Act*, I find that I am unable to grant the Landlord's application for an Order of Possession.

Section 56(2)(a) of the *Act* authorizes me to end the tenancy early and to grant an Order of Possession in any of the following circumstances:

- The tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property
- The tenant or a person permitted on the residential property by the tenant has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant
- The tenant or a person permitted on the residential property by the tenant has put the landlord's property at significant risk
- The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has caused or is likely to cause damage to the landlord's property
- The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property
- The tenant or a person permitted on the residential property by the tenant has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord
- The tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to the residential property.

In my view, failure to pay rent for two months does not constitute grounds to end a tenancy early pursuant to section 56(2) of the *Act*. I therefore dismiss the Landlord's application for an early end to this tenancy.

Based on the undisputed evidence presented at the hearing, I find that the parties had an agreement that the Tenant would install mouldings in the rental unit. I find that the Landlord has an obligation to provide the Tenant with the mouldings for the rental unit, as per the original agreement, so the Tenant can enjoy the benefits of living in a rental unit with mouldings. To ensure that the Landlord provides the Tenant with the full enjoyment of the rental unit, I Order the Landlord to provide the Tenant with sufficient material to install mouldings in areas of the rental unit that do not currently have mouldings. I further Order that the Landlord provide the Tenant with these mouldings prior to December 31, 2011. In the event this tenancy ends prior to December 31,

2011, I find that the Landlord does not need to comply with my Order to supply mouldings.

Based on the undisputed evidence presented at the hearing, I find that the parties had an agreement that the Tenant would repair two broken windows in the rental unit and that the Tenant could deduct the cost of those repairs from rent owing. I find that the Tenant has failed to replace the windows because he determined that he could not afford the cost of materials. I do not find that the Landlord has failed to comply with his agreement in regards to replacing the windows and I therefore dismiss the Tenant's application to make repairs to the windows.

I find that the Landlord's and the Tenant's Application for Dispute Resolution each have some merit and I therefore find they are each responsible for the costs of filing their own Application for Dispute Resolution.

### Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$2,600.00, in compensation for unpaid rent from August and September of 2011. Based on these determinations I grant the Landlord a monetary Order for the amount of \$2,600.00. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia 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 22, 2011.

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Residential Tenancy Branch