



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, CNR, OLC, ERP, RP, PSF, RR, FF

### Introduction

This conference call hearing was convened in response to two applications for dispute resolution as follows:

By the tenant: as an application for cancellation of a 10 Day Notice to End Tenancy; a Monetary Order for cost of emergency repairs; to order the landlord to comply with the Act, Regulation, or tenancy agreement; to make emergency repairs; to make repairs to the unit; to provide services or facilities required by law; to allow to reduce rent for repairs, services or facilities agreed upon but not provided; and to recover the filing fee associated with this application.

By the landlord: as an application for an Order of Possession for unpaid rent; a Monetary Order for unpaid rent; to keep the security deposit; and to recover the filing fee associated with his application.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions.

It is my decision at the outset of this matter that I will not deal with all the dispute issues that the tenant has placed on his application. For disputes to be combined on an application they must be related. Not all the claims on this application are sufficiently related to the main issue to be dealt with together. Therefore, I will deal with the

tenant's request to set aside or cancel the landlord's Notice to End Tenancy for unpaid rent, and I dismiss the remaining aspects of the tenant's claim with liberty to re-apply.

Issue(s) to be Decided

Should the Notice to End Tenancy be set aside, and should the tenancy continue?

Is the tenant entitled to recover the filing fee?

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a Monetary Order, and if so for what amount?

Is the landlord entitled to keep all or part of the security deposit?

Is the landlord entitled to recover the filing fee?

Background and Evidence

The rental unit consists of a condominium in a multi-unit strata complex. Pursuant to a written agreement, the fixed term tenancy started on July 1<sup>st</sup>, 2011 and was to end on June 30<sup>th</sup>, 2012. The rent is \$2500.00 payable on the third day of each month. The tenant paid a security deposit of \$1250.00. A condition inspection report was completed at the start of the tenancy.

The landlord testified that the tenant has not paid rent for October and November 2011. She stated that a condition inspection report was completed at the start of the tenancy, and that she agreed to address issues with the condition of the carpet, the washing machine, mould around the tub, and a problem with a faucet and sink. She stated that soon after the tenant requested that she change the carpeting to hardwood flooring, which she said that she declined because of the short term of the tenancy. She said that she has had problems receiving rent on time since the start of the tenancy, and that she never agreed to change the flooring as part of the agreement.

The landlord provided a copy of the 10 Day Notice to End Tenancy, with proof of service that it was served by registered mail sent on October 21<sup>st</sup>, 2011. Therefore the notice was considered served on the tenant on October 26<sup>th</sup>, 2011.

The tenant testified that he withheld rent for October and November 2011 in order to stimulate the landlord to make repairs he claims were agreed upon at the start of the tenancy. He said that he did not pay because the landlord did not fix the problems. He said that because of his allergies the current condition of the unit makes it unliveable.

### Analysis

Section 26(1) of the *Act* specifies in part that a tenant must pay the rent when it is due under the tenancy agreement whether or not the landlord complies with the Act or the tenancy agreement. On that basis alone the tenant did not have the right to withhold rent.

If the tenant felt that he had grounds to withhold rent, he would have had to obtain such an order from a Dispute Resolution Officer first. The tenant did not do this and chose to withhold rent without lawful authority to do so.

Accordingly the landlord had grounds to issue the 10 Day Notice to End Tenancy and therefore I find that the notice is of full force and effect. I also find that the landlord is entitled to recover the rent for the months of October and November 2011.

### Conclusion

The tenant's application to cancel the Notice to End tenancy is dismissed without leave to reapply.

I grant the landlord an Order of Possession effective two days from the date the order is served upon the tenant. This Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

The landlord established a claim of \$5000.00. I authorize the landlord to retain the tenant's \$1250.00 security deposit for a balance owing of \$3750.00. Since the landlord was successful, I award the landlord recovery of the \$50.00 filing fee. Pursuant to Section 67 of the Act, I grant the landlord a Monetary Order totalling \$3800.00

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This Order may be registered 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: November 21, 2011.

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Residential Tenancy Branch