



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPL, OPQ, MND, MNSD, MNDC, FF

### Introduction

This conference call hearing was convened in response to the landlord's application for an Order of Possession for another of the unit or property, and for cause; a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement and for damage to the property; to keep the security deposit; and to recover the filing fee associated with this 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.

### Issue(s) to be Decided

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 the upper level of a single detached home. Pursuant to a verbal agreement, the tenancy started in January 2009. The rent is \$600.00 per month and the tenant paid a security deposit of \$300.00.

The landlord testified that the tenants have piled a significant amount of garbage for quite some time and that they have not disposed of it even after being requested to do so. He stated that the tenants are lazy and uncooperative. He said that the tenants built a shed to raise fishing worms without permission and that they did not obtain a city permit. He said that the amount of garbage is not only a health hazard but that it negatively impacts his interest and the interest of the downstairs tenant.

In his documentary evidence, the landlord provided 5 photographs in support of his claim for damages, showing a significant amount of garbage on the balcony and the yard, and showing a shed that the tenant built in the backyard without the landlord's consent. The landlord also provided a copy of the 1 Month Notice to End Tenancy that he served on the tenants on December 13th, 2011, and a copy of a letter dated October 11<sup>th</sup>, 2011, stating that he asked 5 times for the tenants to dispose of their garbage, and that they have until October 14<sup>th</sup> to comply. The landlord said that the tenants did not comply.

The landlord claims \$2000.00 to dispose of the garbage and the torn down shed; \$1200.00 to tear down the shed; and \$400.00 to collect and load the garbage for a claim totalling \$3600.00, which he said are estimates at this point because none of the work has been performed yet.

Through the interpreter, the tenant testified that the landlord has not provided them with a garbage disposal service in spite of several requests. She said that the garbage on the balcony has now been cleaned and that it only has to be disposed of. She stated that the landlord agreed to the building of a shed; nevertheless, she stated that she understands the landlord's frustrations and that she is willing to comply since it has come down to this.

### Analysis

Section 47(5) of the *Residential Tenancy Act* provides that if a tenant who has received a notice to end tenancy with cause does not make an application for dispute resolution within 10 days, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date. The tenant in this matter has not filed an application for dispute resolution. On that basis alone I find that the landlord is entitled to an Order of Possession.

There was no evidence before me that the landlord promised that garbage disposal was part of the tenancy agreement. Regardless, after reviewing the photographic evidence I find that the tenants were clearly negligent in properly bagging and securing their garbage. Section 32 of the *Residential Tenancy Act* provides in part that; a tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. The tenants are clearly in violation of that section and the landlord had grounds to issue the 1 Month Notice to End Tenancy.

Now turning to the landlord's monetary claim; the tenants are still occupying the unit and have an opportunity to clean, tear down the shed, and dispose of all garbage before moving out. Section 37 of the *Residential Tenancy Act* provides in part that upon vacating a rental unit, the tenant must leave the unit reasonably clean and undamaged, except for reasonable wear and tear. I remind the tenant of her statutory obligation to comply with the Act. The landlord's claim against the tenant is premature and therefore I dismiss this aspect of the claim.

### Conclusion

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.

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: January 17, 2012.

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Residential Tenancy Branch