



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPB, MND, MNSD, MNDC, FF

### Introduction

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

The landlords participated in the hearing and provided affirmed testimony. They testified that they served the Notice of a Dispute Resolution Hearing to the tenant by way of registered mail sent on January 24<sup>th</sup>, 2012, and provided a Canada Post tracking number. The tenant did not participate and the hearing proceeded in the tenant's absence.

### Issue(s) to be Decided

Are the landlords entitled to an Order of Possession?

Are the landlords entitled to a Monetary Order, and if so for what amount?

Are the landlords entitled to keep all or part of the security deposit?

Are the landlords entitled to recover the filing fee?

### Background and Evidence

The rental unit consists of a condominium in a strata community complex. Pursuant to a written agreement, the fixed term tenancy started on October 1<sup>st</sup>, 2011 and was to end on September 30<sup>th</sup>, 2012. The rent was \$925.00 per month and the tenant paid a security deposit of \$465.00.

The landlords testified that they received four complaints from the strata manager over incidents that occurred on December 21<sup>st</sup>, and December 28<sup>th</sup>, 2011. In their documentary evidence, the landlords provided copies of the complaints. The December 21<sup>st</sup>, 2011 complaint reports that the tenant or her visitors were loud, seemingly intoxicated, and extremely disruptive to the neighbours. The December 28<sup>th</sup> complaint reports that the tenant or her visitors damaged the entrance gate to the complex. The landlords stated that on that date, the tenant hosted a large party. They stated that the complex is secured by a gate to control access, and that as the night progressed, a number of individuals broke the gate down in order to join the party. The landlords stated that incidentally, the gate had just been fixed that afternoon at a cost of \$1876.00 and that according to the strata manager, this repair is similar and therefore will be at least \$1600.00. The landlords stated that a number of lighting fixtures were also broken, and they provided an estimate of \$386.36 for these repairs.

The landlords stated that on January 16<sup>th</sup>, 2012 they served the tenant with a 1 Month Notice to end Tenancy by registered mail, and that the tenant acknowledged receipt of the notice by electronic correspondence. They also stated that the tenant stated that she would leave on or about the end of January 2012, but that she has not provided a forwarding address and stated that she had no money to pay for future rent. The effective date of the notice is February 28<sup>th</sup>, 2012.

The landlords seek to recover the cost of repairs for the gate estimated at \$1600.00, the light fixtures estimated at \$386.36 and the loss of rental income for February 2012.

### Analysis

I accept the landlords' undisputed testimony that they served the tenant with the Notice of Dispute Resolution in a proper manner pursuant to section 89 of the *Residential Tenancy Act*. I find that the tenant knew, or ought to have had knowledge of the date scheduled for this hearing.

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 I find that the landlords are entitled to an order of possession.

Section 32 of the *Residential Tenancy Act* provides in part that that a tenant must repair damage to the rental unit or common areas by the actions or neglect of the tenant. On the evidence I accept that the tenant is responsible for the damage to the gate. Since the gate was fixed and the cost already established as being within the range of the estimate, I grant the landlords a monetary order for \$1600.00. Concerning the repair to the fixtures, the landlords provided no details concerning the extent of damages. In the absence of more substantive evidence I grant the landlords \$175.00 for this aspect of the repairs.

I also find that in the circumstances the landlords were not in a position to rent the unit for February 2012. The tenant provided no specific move-out date other than the end of January 2011; accordingly I find the landlords entitled to recover the loss of rental income for February 2012.

### Conclusion

I grant the landlords an Order of Possession effective February 28<sup>th</sup>, 2012.

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 \$2700.00. I authorize the landlords to retain the tenant's \$465.00 security deposit for a balance owing of \$2235.00. Since the landlords were successful, I award the landlord recovery of the \$50.00 filing fee. Pursuant to Section 67 of the Act, I grant the landlords a Monetary Order totalling \$2285.00.

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: January 30, 2012.

---

Residential Tenancy Branch