



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

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

### 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 Landlord applied on January 31, 2012 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 applied on February 1, 2012 for:

1. An Order cancelling a Notice to End Tenancy – Section 46;
2. A Monetary Order for compensation or loss - Section 67;
3. An Order for a rent reduction for repairs, services agreed upon but not provided - Section 65; and
4. 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.

### Issue(s) to be Decided

Is the Notice to End Tenancy valid?

Is the Landlord entitled to an Order of Possession?

Are the Parties entitled to the monetary amounts claimed?

Are the Parties entitled to recovery of their respective filing fees?

Background and Evidence

The tenancy began on April 1, 2010. The original rent for \$900.00 was reduced for October 2010 to the amount of \$800.00 and 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 for \$450.00. The Tenant failed to pay full rent for December 2011 and further failed to pay any rent for January and February 2012. On January 25, 2012, the Landlord personally served the Tenant with a notice to end tenancy for non-payment of rent. The Landlord claims \$2,125.00 in unpaid rent. The Tenant filed an application on January 30, 2012 to dispute the Notice, has not moved out of the unit and agrees that the rent as claimed by the Landlord has not been paid.

The Tenant states that the Landlord has failed to provide an adequate heating system and has failed to remedy a septic overflow into the Tenants yard. The Tenant states that the unit was rented with a gas furnace but the furnace did not work and the gas line was disconnected in June 2010. The Parties agree that the Landlord was informed of these events in September 2010 and that although the Tenant requested a rent reduction of \$150.00, the Tenant was provided with a rent reduction of \$100.00 as of October 1, 2010. The Tenant states that a broken wood stove was in the unit at the time and that this stove was replaced by December 1, 2010. The Tenant states that the neither of the wood stoves heated the unit properly and that the Tenant used her own electric heater but that this was unsatisfactory to heat the unit as well. The Tenant states further that the wood stove was a fire hazard. The Tenant states that she would never have moved into the unit without a gas furnace and that she never agreed to the Landlord's decision on the amount of the reduction. The Tenant states that the issue of the heat was raised again with the Landlord in January 2012 when pipes froze and the Tenant was without hot water. The Tenant states that she never agreed to the amount of the rent reduction provided for the loss of a furnace and claims a further reduction to be retroactively applied to the start of the tenancy. The Landlord states that the Tenant never asked the Landlord for a further rent reduction.

The Tenant states that sometime after the spring of 2011, sewer started backing up into the bathtub and sink. The Tenant states that this occurred following the breach of the Tenant's back yard by heavy equipment taking soil samples. The Tenant states that the Landlord was informed of the problem and that the Landlord was good in responding to the problem by draining the septic tank but that the sewer continued to come up on the ground. The Tenant states that the Landlord emptied the tank again in the fall of 2011 and then refused to empty the tank further in January 2012. The Tenant states that in January 2012, the pipes froze, water stopped running and the sewer backed up. The Tenant states that the Landlord fixed the water problem but refused to carry out any further emptying of the septic tank.

The Landlord states that sometime between 2011 and 2012, the drain field was compromised and that the expense of emptying the septic tank became too great. The Landlord states that in January 2012 the Tenant was offered help to find other accommodation and was also offered a month's rent in compensation but has refused the offers. It is noted that the Landlord's letter dated February 1, 2012 sent to the Tenant sets out that the house "does not have essential services required to be habitable". The Landlord states that the unit is to be demolished.

### 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. If the tenant does neither of these two things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice.

Based on the Landlord's evidence I find that the Tenant was served with a notice to end tenancy for non-payment of rent and I find the notice to be valid. Although the Tenant filed an application to dispute the notice, given the Tenant's agreement that rent has not been paid, I find that the Landlord is entitled to an **Order of Possession**. I also find

that the Landlord has established a monetary claim for **\$2,125.00** in unpaid rent. Setting the security deposit plus interest of **\$450.00** off this entitlement leaves **\$1,702.00** owing by the Tenant to the Landlord.

Section 32 of the Act provides as follows:

- (1) A landlord must provide and maintain residential property in a state of decoration and repair that
  - (a) complies with the health, safety and housing standards required by law, and
  - (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.
- (5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

Section 7 of the Act provides that if a landlord does not comply with the Act, regulation or the tenancy agreement, the landlord must compensate the tenant for damage or loss that results. Based on undisputed evidence of the Parties that the unit was without a functioning a gas furnace from the onset of the tenancy, I find that the unit was unsuitable for occupation. Although the Landlord attempted to resolve this problem by installing a new wood stove and reducing the Tenant's rent by \$100.00, accepting that the a wood stove does not reasonably replace the heating capacity of a furnace, I find that this action was insufficient to reasonably remedy the problem.

Although the Landlord claims not to have precise knowledge of when the drain field became a problem, based on the Tenant's evidence that such problem occurred following the incursion of heavy equipment and the Landlord's acknowledgment that the field was discovered to be a problem sometime in 2011, I find that the Landlord knew or ought to have known that the septic drain field was a significant problem in April 2011. I further find that the unit's unsuitability worsened at this point. Although the Landlord acted to mitigate the damage that was caused by the septic field by emptying the septic tank, I find that the Landlord should have reasonably known that such action would not be sufficient given the Landlord's evidence that they were aware that the problem was

with the drain field. Accepting the Landlord's evidence that the continuing expense of draining the septic tank was not feasible, I find it would have been reasonable therefore for the Landlord to have considered other options such as ending the tenancy. I find that by waiting until January and February 2012 to offer the Tenant assistance in finding alternate accommodation and offering a month's rent to be less than reasonable.

However, given that the Tenant remained in the unit throughout these deficiencies and accepted a reduction of rent for the loss of the furnace, I find that the most reasonable compensation that the Tenant is now entitled to, would be an amount equivalent to \$200.00 per month for a period of 10 months, for an amount of \$2,000.00, that being the approximate period of time that the drain field was known to be the problem up to the point that the Landlord acknowledge to the Tenant that the tenancy would need to end.

As each Party was successful with their claim, I make no order in relation to their respective filing fees. Setting the Tenant's entitlement of **\$2,000.00** off the Landlord's entitlement of **\$1,702.00** leaves **\$298.00** owed by the Landlord to the Tenant.

#### 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 grant the Tenant an order under Section 67 of the Act for **\$298.00**. 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: February 24, 2012.

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Residential Tenancy Branch