



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

OPR, MNR, MNSD, 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, a monetary Order for money owed or compensation for damage or loss, to retain all or part of the security deposit, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

The Landlord applied to amend the Application for Dispute Resolution to include a claim for rent that has not yet been paid. The Tenant did not oppose the request and the Application has been amended accordingly.

The Tenant filed an Application for Dispute Resolution, in which the Tenant has made application to set aside a Notice to End tenancy, for more time to apply to set aside the Notice to End Tenancy, and to recover the filing fee from the Landlord 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.

The male Landlord stated that the Application for Dispute Resolution was sent, by registered mail, to the male Tenant on May 16, 2012. The Tenant acknowledged that they each received the Application for Dispute Resolution by mail and that she was representing the male Tenant, who is her brother, at this hearing.

The Landlord submitted documents to the Residential Tenancy Branch, copies of which were served to the Tenant. The Tenant acknowledged receipt of the Landlord's evidence and it was accepted as evidence for these proceedings. The Tenant submitted documents to the Residential Tenancy Branch, copies of which were served to the Landlord. The Landlord acknowledged receipt of the Tenant's evidence and it was accepted as evidence for these proceedings.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to an Order of Possession for unpaid rent or whether the Notice to End Tenancy should be set aside; whether the Landlord is entitled to a monetary Order for unpaid rent, damages to the rental unit, and NSF fees; whether the Landlord is entitled to keep all or part of the security deposit; and whether either party is entitled to recover the filing fee from the cost of the Application for Dispute Resolution, pursuant to sections 38, 46(4), 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The Landlord and the Tenant agree that both Respondents entered into a written tenancy agreement in 2006; that the current rent is \$1,077.00 per month; that rent is due on the first day of each month; and that the Tenant paid a security deposit of \$300.00 on August 31, 2006 and \$162.50 on September 05, 2006.

The Landlord and the Tenant agree that the rent cheque for April, dated April 01, 2012, was returned to the Landlord as there were insufficient funds in the Tenant's account. The parties agree that the Tenant replaced that cheque with a money order, in the amount of \$532.00, and a cheque, dated April 26, 2012, in the amount of \$545.00. The Landlord is seeking compensation, in the amount of \$25.00, as a fee for processing this NSF cheque. The tenancy agreement provides for a \$25.00 fee when a cheque is not honored by the Tenant's financial institution.

The Landlord and the Tenant agree that the Landlord presented the cheque, dated April 26, 2012, was processed prior to April 26, 2012, and that it was returned to the Landlord as there were insufficient funds in the Tenant's account. The Landlord withdrew the claim for an NSF relating to this cheque, as the cheque was processed prior to the effective date of the cheque.

The Landlord and the Tenant agree that the Tenant has not paid the outstanding rent for April, in the amount of \$545.00.

The female Landlord stated that she mailed a Ten Day Notice to End Tenancy for Unpaid Rent, which had a declared effective date of May 15, 2012, to the Tenant on May 01, 2012. The Tenant stated that on, or about, May 06, 2012, her brother provided her with a copy of the Notice to End Tenancy that was mailed to them. She does not know when her brother, who is the male Tenant, actually received the Notice that was mailed.

The female Landlord stated that an agent for the Landlord posted a copy of this Notice on the door of the rental unit. She believes it was posted on May 03, 2012. The Landlord submitted in incomplete Proof of Service that is signed by the agent for the Landlord who allegedly posted the Notice in the place where a person who witnessed the service would normally sign this document. The Tenant stated that on, or about,

May 11, 2012 her brother showed her the copy of the Notice that was posted on their door. She does not know when her brother, who is the male Tenant, actually received the Notice that was posted on the door.

The Landlord is seeking compensation for costs arising from a blocked toilet. The male Landlord stated that the Tenant's toilet overflowed on December 20, 2011; that the toilet has been inspected by two plumbers, neither of which could identify a problem with the toilet; that he does not know the age of the toilet; that the Tenant had not previously reported problems with the Tenant; and that the Tenant told a plumber that her stools are unusually hard due to medication and that may have caused the blockage.

The Tenant stated that she used the toilet at 10 p.m. on December 19, 2011; that the toilet functioned properly at that time and did not leak; that she does have unusually hard stools due to her medication but they are the size of marbles; that during the past two years the water in the tank has, on occasion, continued to run until she manipulated the handle; that the toilet tank has overflowed one or two times in the past two years and she has simply wiped up the water; that she mentioned the problems to the Landlord one or two years ago; and that she did not realize the toilet had overflowed until the manager awakened her on December 20, 2011 and advised her of the leak.

The Landlord is seeking compensation, in the amount of \$50.00, for cleaning the bathroom. The male Landlord stated that the Landlord installed new toilets in January of 2012. The Landlord submitted a copy of an invoice for this installation, on which the plumber indicated the bathrooms were very unsanitary and had to be cleaned, for which he charged \$50.00.

The Landlord and the Tenant agree that this tenancy was the subject of a dispute resolution hearing on November 23, 2011, at which time the Tenant was ordered to clean the bathroom floor. The parties agree that the Landlord informed the Tenant of the date the toilets were to be installed and asked the Tenant to ensure the bathrooms were clean. The Tenant stated that she cleaned the bathroom shortly before the plumber arrived to install the toilet.

### Analysis

Based on the undisputed evidence presented at the hearing, I find that the Tenants are currently required to pay monthly rent of \$1,077.00 by the first day of each month; that the rent cheque tendered for rent for April 01, 2012 was returned to the Landlord due to insufficient funds; that the rent cheque dated April 26, 2012 was processed prior to the date on the cheque and was also returned to the Landlord due to insufficient funds; and that the Tenant has not yet paid the \$545.00 that is outstanding from April of 2012. As the Tenant is required to pay rent pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$545.00 in outstanding rent to the Landlord.

As the Tenant signed a tenancy agreement that requires a \$25.00 payment when a cheque is returned due to NSF funds and the cheque dated April 01, 2012 was returned to the Landlord due to insufficient funds, I find that the Landlord is entitled to an NSF fee of \$25.00.

Based on the undisputed testimony, I accept that a Notice to End Tenancy was mailed to the Tenant by registered mail on May 01, 2012. Section 90 of the *Act* stipulates that a document that is mailed is deemed to be received on the fifth day after it is mailed. As the female Tenant acknowledged receiving the Notice on May 06, 2012, I accept that was the date of receipt.

Based on the undisputed testimony, I accept that a Notice to End Tenancy was posted on the door of the rental unit. Section 90 of the *Act* stipulates that a document that is posted on a door is deemed to be received on the third day after it is posted. Even if I were to accept that the Notice was posted on May 03, 2012, as the Landlord contends, the earliest deemed receipt date of that Notice would be May 06, 2012, which is the same date the Tenant acknowledges receiving a copy of the Notice that was mailed.

The Tenant filed an Application for Dispute Resolution to dispute the Notice to End Tenancy on May 10, 2012. As this Application was filed four days after the Notice to End Tenancy was received, I find that the Application was filed within the time lines established by legislation and I do not need to consider the Tenant's application for more time.

If rent is not paid when it is due, a tenancy may be ended pursuant to section 46 of the *Act*. As the Landlord has established that all of the rent due for April 01, 2012 has not yet been paid and that the Tenant was served with a Notice to End Tenancy for Unpaid Rent, I find that the Landlord has grounds to end the tenancy, pursuant to section 46 of the *Act*. I therefore dismiss the Tenant's application to set aside the Notice to End Tenancy and I grant the Landlord's application for an Order of Possession.

Section 32(3) of the *Act* stipulates that a tenant must repair damage to the rental unit that is caused by action or neglect of the tenant. I find that the Landlord has submitted insufficient evidence to show that the toilet overflowed as a result of the actions or neglect of the rental unit. In circumstances where a tenant accidentally or intentionally flushed a foreign object down a toilet, a tenant would typically be responsible for repairing the resulting damage. In these circumstances the Landlord has submitted no evidence that would cause me to conclude that the Tenant misused the toilet.

Section 32(4) of the *Act* stipulates that a tenant is not required to repair damage that arises from reasonable wear and tear. In the event that this toilet was plugged as a result of the toilet being used for its intended purposes, I consider that to be reasonable wear and tear. I therefore find that the Tenant would not be obligated to repair any damage arising from a plugged toilet that she was using in a normal manner. In reaching this conclusion I placed little weight on the fact that the Tenant had unusually hard stools due to medication, as she should have a reasonable expectation that the

toilet provided with her tenancy is capable of processing various forms of human waste. For these reasons I dismiss the Landlord's application for compensation for damage arising from the flooded toilet.

Section 32(2) of the *Act* stipulates that a tenant must maintain reasonable standards of cleanliness. Although the Tenant contends that she cleaned the bathroom prior to the installation of the new toilet I find, on the basis of the notation on the plumbing invoice, that this cleaning was insufficient. I therefore find that the Tenant must pay the Landlord \$50.00 in compensation for having the bathroom cleaned by the plumber.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

I find that the Tenant's Application for Dispute resolution has been without merit and I dismiss the Tenant's application to recover the filing fee.

### Conclusion

I grant the Landlord an Order of Possession that is effective two days after it is served upon the Tenant. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

I find that the Landlord has established a monetary claim, in the amount of \$670.00, which is comprised of \$545.00 in unpaid rent, \$50.00 for cleaning, a \$25.00 NSF fee, and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. I authorize the Landlord to retain the security deposit of \$462.50 plus interest of \$14.78, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$192.72. 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: May 30, 2012.

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Residential Tenancy Branch