



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FF, OLC, MND, MNSD, OPR, MNR

### Introduction

This hearing dealt with cross applications. The landlord is seeking an order of possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim. The tenant is seeking to have a 10 Day Notice for Unpaid Rent or Utilities set aside, a monetary order and an order to have the landlord comply with the Act. Both parties participated in the conference call hearing. Both parties gave affirmed evidence.

### Issues to be Decided

Is either party entitled to any of the above under the Act, the regulations or the tenancy agreement?

### Background and Evidence

The landlord gave the following testimony; the tenancy began on or about July 1, 2008. Rent in the amount of \$997.00 is payable in advance on the first day of each month. At the outset of the tenancy the landlord collected from the tenant a security deposit in the amount of \$462.50. The landlord issued a Two Month Notice to End Tenancy for Landlord's Use on April 30, 2012 with an effective date of June 30, 2012. The tenant failed to pay rent in the month(s) of May and on May 4, 2012 the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The tenant further failed to pay rent in the month(s) of June. The landlord is seeking \$1994.00 in unpaid rent.

The tenant gave the following testimony; the building is an older building that is going to be going through extensive renovations in the near future, all the tenants were notified of such renovations as far back as 2009, in 2010 all tenants were offered one month rent free, one half months rent cash allowance and the return of the security deposit if the tenant's agreed to move out, renovations were not conducted, remained living there as it is difficult to find affordable housing, waited for the offer to be renewed, the landlord notified tenants in April 2012 that renovations are going to commence in the summer but are only offering one month's compensation, feels the landlord is reneging on their initial offer and are not showing any loyalty to their long term tenant's. The tenant is seeking the equivalent of two months' rent as compensation.

### Analysis

As explained to the parties during the hearing, the onus or burden of proof is on the party making the claim. In this case, both parties must prove their claim. When one party provides evidence of the facts in one way, and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

I will deal with the tenant's application as follows; the tenant testified that in 2009 she was given an offer letter by the landlord that offered one months' free rent, the unconditional return of the security deposit and a half a month's rent return for moving costs. The tenant stated she was given this letter and left it on top of her fridge and it has "mysteriously gone missing" along with her lease. The landlord testified that if the tenant was able to produce this letter he would consider it when making a compensation proposal. No copy was given to the landlord nor was one provided for this hearing. The tenant has not satisfied me that any arrangement had been made with the landlord in terms of compensation and based on the insufficient evidence before me I dismiss the tenant's application in its entirety without leave to reapply.

I will deal with the landlord's application as follows; the landlord feels that he should be entitled to a monetary order for two months of unpaid rent (\$1994.00). Section 51(1) of the Act states that a tenant who receives a notice to end a tenancy under section 49 is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement. This section was explained to both parties during the hearing. The Section clearly outlines that the tenant is entitled to one month's compensation therefore the landlord is only entitled to seek one month's unpaid rent. Based on the above I find the landlord is entitled \$997.00.

As for the monetary order, I find that the landlord has established a claim for \$997.00 in unpaid rent. The landlord is also entitled to recovery of the \$50.00 filing fee. I order that the landlord retain the \$462.50 deposit and the \$3.49 in interest which has accrued to the date of this judgment in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$531.01. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

As the landlord has been able to establish that the tenant did not pay rent the landlord is entitled to an order of possession. The tenant must be served with the 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.

### Conclusion

The landlord is granted an order of possession and a monetary order for \$531.01. The landlord may retain the security deposit.

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: June 06, 2012.

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Residential Tenancy Branch