



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

Landlords: OPC, MNSD, MNDC, FF

Tenant: CNC, MNR, MNDC, OLC, ERP, RP, AAT, LAT, RR, FF

### Introduction

This hearing dealt with the cross Applications for Dispute Resolution. The landlord sought an order of possession and a monetary order. The tenant sought to cancel a notice to end tenancy; for compensation for damage or loss and for payment of emergency repairs; and for several orders that include having the landlord make repairs and emergency repairs; allow the tenant and her guests the ability to access to the rental unit; to change the locks; and to reduce rent.

The hearing was conducted via teleconference and was attended by both landlords and the tenant.

At the outset of the hearing the tenant testified that she had 83 additional pages of evidence but she has not yet provided it. I advised the tenant that I could not consider any additional evidence at this time as it had not been served to the landlords and to the Residential Tenancy Branch at least 5 days prior to this hearing. I also advised the tenant she was at liberty to provide testimony in regard to the additional evidence.

During the hearing the tenant identified that she has secured a rental unit for July 2012 and that she no longer needs to dispute the notice. As a result I clarified with the tenant that she then no longer needed to seek orders of compliance related to an ongoing tenancy. Therefore, I amend the tenants' application to deal solely with her claim for compensation for damage or loss and for reimbursement of emergency repairs costs only.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession to a monetary order for unpaid rent; for potential cleaning and repairs; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 26, 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenant is entitled to a monetary order for compensation for damage or loss; for reimbursement for monies paid for emergency repairs and to recover the filing fee from the landlords for the cost of the Application for Dispute Resolution, pursuant to Sections 33, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The parties agree the tenancy began on September 15, 2010 as a month to month tenancy for a monthly rent of \$1,500.00 due on the 1<sup>st</sup> of each month with a security deposit of \$750.00 paid.

Both parties provided a copy of a 1 Month Notice to End Tenancy for Cause issued by the landlord on May 28, 2012 with an effective vacancy date of June 30, 2012 citing the tenant has engaged in illegal activity that has or is likely to adversely affect the quiet enjoyment, security, safety, or physical well being of another occupant or the landlord or jeopardize a lawful right or interest of another occupant or the landlord.

The parties also agree that on four occasions the tenant deducted from her rent payments in the following amounts: \$300.00, \$50.00, \$75.00, and \$100.00. The landlord testified there was never any agreement to deduct these amounts, the tenant simply deducted the amounts herself.

The landlord also seeks compensation for potential cleaning and repairs in the amount of \$500.00 at the end of the tenancy. During the hearing the landlord submitted that she was willing to reduce her total claim from \$1,025.00 to the value of the security deposit.

The tenant submits that the \$300.00 was for cleaning the rental unit at the start of the tenancy; the \$50.00 and \$75.00 were to deal with pest control issues; and the \$100.00 was for medical expenses as a result of the pest control substances used by the landlord causing her to faint and break her arm.

The tenant seeks compensation in the amount of \$5,000.00 for the loss of enjoyment of the unit; loss of income; and inconvenience and costs of emergency repairs (specifically ant killer and pest control charges). The tenant submits that her income has suffered because of the landlord's failure to deal with the mouse, mould, electrical, and ant problems in the rental unit.

The tenant has submitted a summary of what she has spent on ant killer; a report from a pest control service provider with no charge attributed to the report and a bill for a cast for \$89.60 and for medical tests in the amount of \$675.00 and several photographs of the rental unit.

### Analysis

As the tenant has withdrawn the portion of her Application seeking to cancel the 1 Month Notice to End Tenancy for Cause issued by the landlord, I find the withdrawal has the same effect as having accepted the end of the tenancy as provided in the notice and I uphold the landlord's 1 Month Notice to End Tenancy for Cause. As such, I find the landlord is entitled to an order of possession in accordance with Section 55 (1)(b).

Section 26 of the *Act* stipulates that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the *Act*, regulation or tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the rent.

Under Section 33 of the *Act* a tenant may deduct from rent an amount paid by the tenant for emergency repairs, if the landlord has not reimbursed the tenant after the tenant provides the landlord with a written account of the cost of the repairs, including receipts.

Section 33 also defines what are considered emergency repairs and they include: major leaks in pipes or the roof; damaged or blocked water or sewer pipes or plumbing fixtures; the primary heating system; damaged or defective locks that give access to a rental unit; or the electrical systems.

From the evidence provided by both parties I find the tenant has not had any emergency repairs completed nor provided the landlord with any receipts for any emergency repairs and as such the tenant was not allowed to retain any amounts from the payment of rent during the tenancy.

Further there is no provision under the *Act* that would allow a tenant to withhold any amount from the payment of rent for cleaning at the start of a tenancy or for the payment of medical expenses incurred, even if the tenant believes the medical costs were incurred as a result of the landlord's actions.

For these reasons, I find the landlord is entitled compensation for the unpaid rent in the amount of \$525.00. However, as the tenancy had not ended at the time of this hearing I cannot consider the landlords' claim for cleaning and repair costs as these are based solely on speculation. As such, I dismiss this portion of the landlord's claim with leave to reapply following the end of the tenancy.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

From the evidence and testimony of both parties I accept that there have been some pest issues during the tenancy and that the landlord was aware of these issues. I find the landlord has accepted responsibility and made repairs for some of these issues.

Specifically, in relation to the ant issue, I find the tenant has failed to establish that there is an ant problem of sufficient nature to cause the loss of any enjoyment of the unit. Further, as the landlord contends the ant problem has been caused by the tenant's use of a product in her business, the burden is on the tenant, as she is the one making the financial claim, to provide sufficient evidence to establish that dealing with the ant problem was the responsibility of the landlord.

I find the tenant has failed to meet this burden and as such, I find the tenant has failed to establish she has suffered a damage or loss; that the damage or loss was a result of the landlords' violation of the *Act*, regulation or tenancy agreement. I also find the tenant has failed to provide sufficient evidence to establish the value of any claimed loss or damage.

For these reasons, I dismiss the tenant's Application in its entirety and without leave to reapply.

### Conclusion

I find the landlord is entitled to an order of possession effective **June 30, 2012 after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$575.00** comprised of \$525.00 rent owed and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$750.00 in satisfaction of this claim, leaving a balance of \$175.00 to be dispersed in accordance with the landlords' obligations under the *Act*.

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 27, 2012.

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Residential Tenancy Branch