



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

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

### Introduction

This hearing dealt with applications from the landlord and the tenant pursuant to the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order to the landlord to provide services or facilities required by law pursuant to section 65; and
- authorization to recover her filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another.

### Preliminary Issues – Service of Documents

The tenant said that she received a copy of the landlord's 10 Day Notice posted on her door on May 18, 2012. The landlord testified that his witness who acted as his agent during various parts of this tenancy received a copy of the tenant's dispute resolution hearing package sent by the tenant by registered mail on May 31, 2012. He said that this package was subsequently forwarded to him by his then agent. I find that both of the above documents were served in accordance with the *Act*.

The landlord's witness, who was acting as the landlord's agent at the time, testified that she sent a copy of the landlord's dispute resolution hearing package to the tenant by registered mail on June 7, 2012. She provided the Canada Post Tracking Number to

confirm this registered mailing. The tenant testified that she never received the landlord's dispute resolution hearing package, although she understood from a notice he posted on her door that he intended to apply for dispute resolution. The tenant said that none of her mail is sent to the mailing address for the rental unit, as she has a separate Post Office box for mailing purposes.

Section 89 of the *Act* establishes that a party may serve an application by registered mail to another party's address. Section 90 of the *Act* states that a document sent by registered mail is deemed served on the fifth day after its mailing. Although the tenant testified that she does not receive mail at the dispute address, I note from her own application for dispute resolution that she identified the dispute address and not some other Post Office Box as the "address for service of documents or notices – where material will give personally, left for, faxed, or mailed." I find the tenant's own application for dispute resolution is very compelling evidence that the landlord's agent sent a copy of the landlord's dispute resolution hearing package by registered mail to the tenant at her correct address. Whether or not the tenant has chosen to pick up this registered mail hearing package, I find that the tenant was deemed served with the landlord's dispute resolution hearing package in accordance with section 90 of the *Act* on June 12, 2012, the fifth day after its mailing.

#### Issues(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession for unpaid rent? Is the landlord entitled to a monetary award for unpaid rent? Is the tenant entitled to a monetary award from the landlord? Should the tenant's rent be reduced? Are either of the parties entitled to recover their filing fees from one another?

#### Background and Evidence

This periodic tenancy commenced on August 15, 2011. Although the copy of the residential tenancy agreement entered into written evidence by the landlord was not signed by the tenant, the parties both agreed that there was a signed tenancy agreement and that it reflected the information contained in the copy submitted into written evidence. Monthly rent is set at \$850.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$425.00 security deposit paid on August 15, 2011.

The landlord gave undisputed oral and written evidence that the tenant paid only \$400.00 of the March 2012 rent. The landlord also gave undisputed oral and written evidence that the tenant has not paid rent for May or June 2012. Since the tenant did not pay her rent for June 2012, the landlord asked for authorization to increase the

amount of his requested monetary award from \$1,300.00 to \$2,150.00. I allowed the landlord's request to alter his application for a monetary award in this manner.

The tenant did not dispute the landlord's application for an end to this tenancy nor his application for a monetary award for unpaid rent. She said that she plans to vacate the rental unit by June 30, 2012 and the landlord agreed to seek an end to the tenancy by that date.

The only issue in dispute at this hearing was the tenant's application to obtain a monetary award for a retroactive reduction in rent in the amount of \$300.00 since she commenced her tenancy in August 2011. She sought this monetary award of \$2,700.00 for nine months of rent she paid for services and facilities she maintained the landlord committed to provide at the commencement of her tenancy, but did not provide. She said that the landlord made an oral agreement with her at the start of her tenancy to provide her with a set of stairs that would enable her to exit her second storey rental unit to have direct use of the backyard of this rental property. She also claimed that the landlord had made a commitment to provide her with a driveway where she could park her vehicle. She said that she has made repeated oral requests to have him comply with his oral undertakings but he has not honoured his initial commitment to provide these facilities to her. She said that she never would have rented this rental unit if she had known that she would be unable to access the backyard from her suite or if she would have known that she would be unable to park her vehicle in the driveway.

#### Analysis

The tenant failed to pay the \$1,300.00 in outstanding rent identified in the 10 Day Notice in full within five days of receiving that Notice. Although the tenant applied to cancel the 10 Day Notice, at the hearing she advised that she was intending to end her tenancy by June 30, 2012. As this scheduled end date to this tenancy was acceptable to the landlord, I dismiss the tenant's application to cancel the 10 Day Notice and find that this tenancy ends by 1:00 p.m. on June 30, 2012. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit by the date required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Based on the landlord's undisputed evidence, I find that the landlord is entitled to a monetary award of \$450.00 for unpaid rent for March 2012, \$850.00 for unpaid rent for May 2012, and \$850.00 for unpaid rent for June 2012.

I allow the landlord to retain the tenant's security deposit plus applicable interest in partial satisfaction of this monetary award. No interest is payable over this period. As

the landlord has been successful in his application, I allow him to recover his filing fee for this application from the tenant.

Turning to the tenant's application for a monetary award, I have taken into account the undisputed evidence from both parties that the tenant never obtained any written commitment in the Residential Tenancy Agreement for this tenancy, nor in any other document, whereby the landlord committed to provide a stairway to the backyard of this property or a driveway where the tenant could park her vehicle. I accept the landlord's oral testimony that he told the tenant that he plans to install a stairway from her rental unit to the backyard and to install a driveway. However, he claims to have offered no promise as to when this will occur. He said that he told the tenant from the outset that the timing of when he could undertake these initiatives was tied to his ability to finance them. He said that he still remains committed to commencing these projects, but cannot predict when this will happen. The landlord correctly noted that their Residential Tenancy Agreement makes no mention of his provision of either a new driveway or a new stairwell that would enable her to access the backyard directly.

While the tenant may have understood that the landlord was planning to undertake these projects shortly after she commenced her tenancy, she has provided inadequate evidence to demonstrate that she had obtained a commitment from the landlord to provide these facilities to her as part of her tenancy agreement. She provided no written evidence that she made enquiries about the landlord's failure to provide what she considers to have been the landlord's firm commitment to supply these facilities to her as part of her Residential Tenancy Agreement. The written record suggests that this only appears to have become an issue for the tenant once she was in arrears with her monthly rent. For the reasons outlined above, I find that the tenant has not demonstrated that the landlord has failed to provide the services and facilities he committed to provide to her in this tenancy. I dismiss the tenant's application for a monetary award for a retroactive reduction in rent without leave to reapply. As the tenant has been unsuccessful in her application for dispute resolution, she bears responsibility for her own filing fee.

### Conclusion

I dismiss the tenant's application to cancel the 10 Day Notice and allow the landlord's application to end this tenancy and obtain an Order of Possession. The landlord is provided with a formal copy of an Order of Possession effective by 1:00 p.m. on June 30, 2012. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary Order in the landlord's favour in the following terms which allows the landlord to recover unpaid rent and his filing fee for this application and to retain the tenant's security deposit.

Item	Amount
Unpaid March 2012 Rent	\$450.00
Unpaid May 2012 Rent	850.00
Unpaid June 2012 Rent	850.00
Less Security Deposit	-425.00
Recovery of Landlord's Filing Fee	50.00
<b>Total Monetary Order</b>	<b>\$1,775.00</b>

The landlord is provided with these Orders in the above terms and the tenant must be served with a copy of these Orders as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

I dismiss the tenant's application in its entirety without leave to reapply.

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 20, 2012

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Residential Tenancy Branch