



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: OPR/OPC, MNR, MNDC, MNSD, FF / CNR, MNDC, MNSD

### Introduction

This hearing was scheduled in response to 2 applications: i) by the landlord for an order of possession for unpaid rent / an order of possession for cause / a monetary order as compensation for unpaid rent / compensation for damage or loss under the Act, Regulation or tenancy agreement / retention of the security deposit / and recovery of the filing fee; ii) by the tenant for cancellation of a notice to end tenancy for unpaid rent / a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / and return of the security deposit.

Both parties participated in the hearing and gave affirmed testimony. However, their conduct was argumentative and despite cautions they persisted in talking over one another. Following my request for final submissions from both parties, they resumed the argument between themselves and the conference call was concluded at 9:50 a.m.

### Issue(s) to be Decided

Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement.

### Background and Evidence

The rental unit is a room located in the lower level of a 2 level house. The rental unit is designated as room # 2. The landlord, who is not the owner of the house, resides in room # 1 in the lower level of the same house.

A previous hearing was held in the on-going dispute between these parties on July 6, 2012, with a decision issued by that same date (file # 792992). In summary, the tenant's application for a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement was dismissed.

There is no written tenancy agreement in evidence for this tenancy which began in January 2012. Monthly rent of \$450.00 is due and payable in advance on the first day

of each month, and a security deposit of \$225.00 was collected. There is no move-in condition inspection report in evidence.

The landlord issued a 1 month notice to end tenancy for cause dated June 27, 2012. A copy of the notice was submitted in evidence. The date shown on the notice by when the tenant must vacate the unit is July 31, 2012. Reasons shown on the notice for its issuance are as follows:

Tenant or a person permitted on the property by the tenant has:

significantly interfered with or unreasonably disturbed another occupant or the landlord

seriously jeopardized the health or safety or lawful right of another occupant or the landlord

put the landlord's property at significant risk

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

jeopardize a lawful right or interest of another occupant or the landlord

There is no evidence before me that the tenant filed an application to dispute this notice.

Arising from rent which remained unpaid when due on July 1, 2012, the landlord issued a 10 day notice to end tenancy for unpaid rent dated July 16, 2012. The notice was served in-person on that same date. A copy of the notice was submitted in evidence. Subsequently, the tenant filed an application to dispute the notice on July 20, 2012. As to whether any payment of rent subsequently took place, the landlord claims that it did not. For the tenant's part, he claims that the landlord informed him that he could have a rent-free month if he vacated the unit in a timely manner; the landlord denies this.

During the hearing the parties agreed that the tenant vacated the unit on or about August 2, 2012. Accordingly, the landlord withdrew his application for an order of possession. There is no move-out condition inspection report in evidence.

### Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: [www.rto.gov.bc.ca](http://www.rto.gov.bc.ca)

Based on the documentary evidence and testimony of the parties, the various aspects of the respective applications and my findings around each are set out below.

## LANDLORD

Order of possession. As noted above, this aspect of the application has been withdrawn.

**\$450.00: unpaid rent for July.** I find that the tenant was served with a 10 day notice to end tenancy for unpaid rent dated July 16, 2012. While the tenant filed an application to dispute the notice within 5 days following its receipt, I find on a balance of probabilities that the tenant did not thereafter pay any portion of the outstanding rent before vacating the unit on August 2, 2012. On a balance of probabilities, I also find that the parties had no agreement between them pursuant to which the tenant was given a rent-free month. Accordingly, I find that the landlord has established entitlement to the amount claimed.

**\$450.00: cleaning & repairs to the unit.** In the absence of either a move-in or move-out condition inspection report, or any related receipts in evidence, this aspect of the application is hereby dismissed. In this regard, the attention of the parties is drawn to the following relevant sections of the Act:

**Section 23: Condition inspection: start of new tenancy or new pet**

**Section 24: Consequences for tenant and landlord if report requirements not met**

**Section 35: Condition inspection: end of tenancy**

**Section 36: Consequences for tenant and landlord if report requirements not met**

**\$50.00: filing fee.** As the landlord has achieved only partial success with his application, I find that he has established entitlement to recovery of the filing fee in the limited amount of **\$25.00**, or half the amount claimed.

**Entitlement Sub-total: \$475.00** (\$450.00 + \$25.00).

I order that the landlord retain the security deposit of **\$225.00**, and I grant the landlord a monetary order under section 67 for the balance owed of **\$250.00** (\$475.00 - \$225.00).

## TENANT

**Cancellation of a notice to end tenancy for unpaid rent.** As tenancy has ended and the tenant has vacated the unit, I consider this aspect of the application to be withdrawn.

**\$450.00: reimbursement of rent.** I find that there is insufficient evidence that the parties reached any agreement pursuant to which the tenant was offered a rent-free month. On a balance of probabilities I also find that the tenant made no payment whatsoever

toward July's rent following issuance of the 10 day notice. Accordingly, this aspect of the tenant's application is hereby dismissed.

\$325.00: "punitive damages." I consider that this aspect of the tenant's application concerns an alleged breach of the right to quiet enjoyment. In this regard, section 28 of the Act addresses **Protection of tenant's right to quiet enjoyment**. After reviewing the tenant's documentary account of miscellaneous interactions with the landlord, it appears that the parties experienced a difficult and challenging relationship between them. However, having considered the evidence which includes, but is not limited to, photos, and a written submission / testimony from the tenant's witness, I find that there is insufficient evidence to support any particular entitlement arising from an alleged breach of the right to quiet enjoyment. Further, any allegations related to physical violence are properly taken to the attention of police. In the result, this aspect of the application is hereby dismissed.

\$225.00: return of security deposit. Following from my finding that the landlord is entitled to retain the security deposit as an offset to his claim for unpaid rent and the filing fee, as above, this aspect of the tenant's application is hereby dismissed.

### Conclusion

The tenant's application is hereby dismissed in its entirety.

I order that the landlord retain the security deposit of \$225.00.

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$250.00**. This order may be served on the tenant, 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: August 15, 2012.

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Residential Tenancy Branch