



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, MNDC, FF, CNC, OLC, RP, ERP, PSF

### Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

The Tenant applied on October 23, 2012 for:

1. An Order cancelling a Notice to End Tenancy for Cause – Section 47;
2. An Order for the Landlord to comply with the Act – Section 62;
3. An Order for the Landlord to make emergency and other repairs – Section 32;
- and
4. An Order for the Landlord to provide services or facilities required by law - Section 65.

The Landlord applied on June 21, 2011 for:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent – Section 67
3. A Monetary Order for compensation – Section 67;
4. An Order to retain all or part of the security deposit – Section 38;
5. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions. At the onset of the Hearing, the Tenant clarified that the claim for the Landlord to provide services and the claim seeking the Landlord's compliance are made in relation to the claim for repairs.

### Issue(s) to be Decided

Is the Notice to End Tenancy valid?

Is the Landlord entitled to an Order of Possession?

Is the Landlord entitled to the monetary amounts claimed?

Is the Tenant entitled to the order for repairs?

Is the Landlord entitled to recovery of the filing fee?

### Background and Evidence

The following are agreed facts: The tenancy started on October 1, 2005. Rent of \$1,277.00 is payable monthly on the first day of each month. At the outset of the tenancy, the Landlord collected \$537.50 as a security deposit. The Tenant did not pay October and November 2012 rent.

The Landlord states that on October 3, 2012 the Tenant was served a 10 day Notice to End Tenancy for Unpaid Rent (the "Notice") by registered mail. The Tenant states that the Notice was never received by him and that he only received a one month notice to end tenancy for cause on October 21, 2012. The Tenant states that he did not pay the rent because the Landlord has not made repairs to the unit. The Landlord provided postal receipts, tracking information and a copy of the returned mail envelope in relation to the service of the Notice.

### Analysis

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does neither of these two things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice.

Based on the Landlord's evidence of service, I find on a balance of probabilities that the Tenant was served with a notice to end tenancy for non-payment of rent and based on the agreed evidence of the Parties that rent was not paid I find the notice to be valid. The Tenant has not filed an application to dispute the notice and has not paid the outstanding rent. Given these facts, I find that the Landlord is entitled to an **Order of**

**Possession.** I also find that the Landlord has established a monetary claim for **\$2,554.00** in unpaid rent. The Landlord is also entitled to recovery of the **\$50.00** filing fee for a total monetary amount of **\$2,604.00**.

Setting the security deposit of **\$537.50** plus **\$19.03** in interest off the entitlement leaves **\$1,997.47** payable by the Tenant to the Landlord. As the tenancy has ended pursuant to the Notice, I dismiss the Tenant's application.

#### Conclusion

**I grant** an Order of Possession to the Landlord. The Tenant must be served with this **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.

**I order** that the Landlord retain the **deposit** and interest of \$556.53 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **\$1,997.47**. If necessary, this order may be 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: November 28, 2012.

---

Residential Tenancy Branch