



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF, LAT, LRE, OPT

### Introduction

This hearing dealt with an application by the landlord for an order of possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim. The tenant filed an application seeking to have an order to suspend or set conditions on the landlords' right to enter the rental unit, an order of possession for the tenant and an order authorizing the tenant to change the locks to the rental unit. 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 November 1, 2012. Rent in the amount of \$650.00 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 \$325.00. The tenant failed to pay rent in the month(s) of May 2013 and on May 12, 2013 the landlord served the tenant with a notice to end tenancy. The tenant further failed to pay rent in the month(s) of June. The landlord stated that he disputes the tenants' application in its entirety.

The tenant gave the following testimony:

The tenant acknowledges and agrees to the amount of unpaid rent. The tenant stated that she withheld the rent due to a number of deficiencies in the unit including; a broken door, mould formation, plumbing issues and safety issues for her family. The tenant stated that she verbally informed the landlord of this issue and nothing was done about it.

### 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.

The tenant did not provide any documentary evidence to support her claim. The tenant stated that she verbally informed the landlord of these issues. The tenant did not dispute the unpaid amount as she felt justified in withholding the rent. The tenant has not been able to provide sufficient evidence to support her claim. I dismiss the tenant's application in its entirety without leave to reapply.

I accept the landlord's testimony and I find that the tenant was served with a notice to end tenancy for non-payment of rent. The tenant did not pay the outstanding rent within 5 days of receiving the notice. Although the tenant applied for dispute resolution the tenant did not apply to dispute the notice and is therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the notice. In addition, in the tenants own testimony she confirmed the debt owed to the landlord. Based on the above facts I find that 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.

As for the monetary order, I find that the landlord has established a claim for \$1300.00 in unpaid rent. The landlord is also entitled to recovery of the \$50.00 filing fee. I order that the landlord retain the \$325.00 deposit in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$1025.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

### Conclusion

The landlord is granted an order of possession and a monetary order for \$1025.00. The landlord may retain the security deposit.

The tenant's application is dismissed 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 24, 2013

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Residential Tenancy Branch

