



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPC, MND, MNR, FF, CNC

### Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- an Order of Possession for cause pursuant to section 55;
- a monetary order for unpaid rent and for damage to the unit 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 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47; and
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The tenant confirmed that the landlord handed him the 1 Month Notice on June 9, 2013. The tenant also confirmed that he received a copy of the landlord's dispute resolution hearing package sent by the landlord by registered mail on July 5, 2013. The landlord confirmed that he received a copy of the tenant's dispute resolution hearing package sent by the tenant by registered mail on June 20, 2013. I am satisfied that the parties served one another with the above documents and their written evidence packages in accordance with the *Act*.

### Issues(s) to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession for cause pursuant to his issuance of the 1 Month Notice? Is the landlord entitled to a monetary award for unpaid rent and for damage arising out of this tenancy? Is the tenant's application for a monetary award for losses arising out of this tenancy within my jurisdiction? Are either of the parties entitled to recover their filing fees for their applications from one another?

Although the landlord submitted a video (including audio) of an incident involving the tenant and those helping the landlord in the landlord's garage, the tenant testified that he had not been able to access that digital evidence as he is working out of town and has no computer available. I have not considered this digital evidence as I am not satisfied that this evidence was made available to the tenant in a way that enabled him to adequately respond to the landlord's allegations in this regard. However, I have heard sworn testimony from the parties and two witnesses who were in attendance on that occasion and have taken that sworn evidence into account in my decision-making.

### Background and Evidence

While I have turned my mind to all the documentary evidence, including photographs, invoices, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the claims and my findings around each are set out below.

This periodic tenancy for the upper level of a two-unit rental home commenced on or about August 1, 2011. The landlord lives in the lower level of this home. Monthly rent is set at \$750.00, payable in advance on the first of each month. There is no security deposit for this tenancy. The landlord entered into written evidence a copy of the written Residential Tenancy Agreement (the Agreement), which noted that all utilities were included in the monthly rent. The landlord provided sworn testimony and written evidence that he allowed the tenant a reduced monthly rent of \$750.00, in exchange for the tenant's commitment to undertake repairs to the upper rental unit in this two unit rental home, to make it habitable. The landlord claimed that the tenant was to assist the landlord with these repairs in exchange for what the landlord claimed was a \$250.00 reduction in rent for the upper rental unit. He said that the upper rental unit would have rented for \$1,000.00 per month had it been fully repaired and ready for occupation.

In addition to the Agreement and short initial addendum both parties signed on July 21, 2011, the landlord submitted into written evidence a copy of a December 2, 2011 document he provided to the tenant. The tenant gave undisputed sworn testimony that he refused to sign this document, although he did receive it. In the December 2, 2011 document, the landlord outlined a number of concerns he had with the tenant, claiming that the tenant had failed to fulfill the commitments he made when he entered into the Agreement. In the December 2, 2011 document, the landlord maintained that the tenant had agreed to help with the repairs and the tenant had estimated that it would take approximately one month to repair two rooms that needed repair. The landlord committed to pay for any materials. However, the landlord put the tenant on notice that "I insist that I be on-site during the repairs, and that no repairs or modifications take place without written permission." The landlord stated that if the conditions of his

December 2, 2011 document were not met, the tenant's rent and utilities would need to be renegotiated. In this document, the landlord also expressed concerns about noise and damage to the rental unit. He stated that he would undertake eviction procedures if the tenant did not sign the December 2, 2011 document within 24 hours. As noted above, the tenant refused to sign this document.

In his written, photographic and digital evidence and in sworn testimony, the landlord cited many concerns that prompted his issuance of the 1 Month Notice. Chief among these were the landlord's allegations that the tenant has been belligerent and threatening. The landlord and two witnesses gave sworn testimony that the tenant threatened one of the witnesses on the rental unit with serious bodily harm while the witness was visiting the landlord on the rental property. Witness GK is a friend of the landlord's who lives down the street from the rental property and often drops by to visit the landlord and help him with his rental property. The landlord also testified that the tenant and his guests stomp on the floor of the tenant's rental unit at all hours of the night to keep the landlord awake. The landlord and his witnesses testified that the tenant threatens and intimidates the landlord and his guests.

The landlord's application for a monetary award of \$9,288.00 included the following listed in his written evidence and confirmed during this hearing:

| <b>Item</b>  | <b>Amount</b> |
|--|---------------|
| Losses in Potential Rent Arising from Tenant's Failure to Complete Promised Renovation of Upper Rental Unit ( 24 months @ \$250.00 = \$6,000.00) | \$6,000.00    |
| Landlord's Estimated Increased Costs of Hydro  | 638.00        |
| Landlord's Costs in Cleanup of Front Yard due to Tenant's Damage to Landlord's Weed Whacker  | 900.00        |
| Damage and Losses Arising from Broken Toilet (\$300.00 = \$50.00 +\$50.00 = \$400.00)  | 400.00        |
| Cleanup of Gravel Sprayed by Tenant  | 150.00        |
| Reconditioned Weed Whacker Broken by Tenant  | 90.00         |
| Damage to Cupboard Doors   | 150.00        |

|  |                   |
|--|-------------------|
| One Day's Time Pursuing Concerns about Tenant with Police    | 200.00            |
| One Month Lost Income for Upper Rental Unit Being Unrentable | 1,000.00          |
| 10 % Increase in Natural Gas Consumption                     |                   |
| <b>Total of Above Items</b>                                  | <b>\$9,528.00</b> |

The landlord produced no receipts for any of the above items and testified that some of the items claimed (e.g., repair of damage to cupboard doors) have not been repaired.

The tenant's application for a monetary award of \$3,300.00 included the following items listed in undated invoices prepared by the tenant and entered into his written evidence:

| <b>Item</b>   | <b>Amount</b>     |
|---|-------------------|
| Day 1 – Stripping 50% off Roof  | \$300.00          |
| Day 2 – Strip and Remove Shingles from Roof                           | 300.00            |
| Day 3 – Help Carry Shingles and Load Old Shingles in Trailer          | 300.00            |
| Repair Hole in Kitchen Ceiling  | 300.00            |
| Day 1 – Gut Room and Remove Waste Strip and Remove Shingles from Roof | 300.00            |
| Day 2 – Insulate and Vapour Barriers                                  | 300.00            |
| Day 3 - Drywall and First Tape Coat                                   | 300.00            |
| Day 4 – 2 <sup>nd</sup> Coat and 3 <sup>rd</sup> Coat, Sand and Prime | 300.00            |
| Day 1 – Pick up Fence Sections  | \$300.00          |
| Day 2 – Pick up Four Concrete Posts and Dig Holes                     | 300.00            |
| Day 3 – Dig Additional Holes and Install New Posts                    | 300.00            |
| Day 4 – Install New Fence Sections and Help Dig under Sidewalk        | 300.00            |
| <b>Total of Above Items</b>   | <b>\$3,600.00</b> |

Other than the above handwritten undated invoices, the tenant supplied little evidence to support his monetary claim. At the hearing, he testified that his claim was for work that he performed for the landlord for which he was not paid. He entered late written evidence from an employer who confirmed that his usual daily rate of pay as a drywaller is \$300.00 per day.

Analysis – Notice to End Tenancy and Request for an Order of Possession

Section 47 of the *Act* provides the statutory basis to enable a landlord to end a tenancy for cause. The landlord entered into written evidence a copy of his 1 Month Notice of June 9, 2013. In that Notice, seeking an end this tenancy by July 9, 2013, the landlord cited the following reasons for the issuance of the Notice:

*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 caused extraordinary damage to the unit/site or property/park.*

*Tenant has not done required repairs of damage to the unit site.*

A tenancy may end if an Arbitrator decides that a landlord has demonstrated that any of the reasons cited in the 1 Month Notice exist. In accordance with the powers set out in the *Act*, the landlord's selection of July 9, 2013, as the end date for this tenancy is automatically corrected to July 31, 2013, the first possible date that a 1 Month Notice served on June 9, 2013 could take effect.

Based on the sworn testimony before me and on a balance of probabilities, I find that the tenant has acted in a threatening manner to the landlord and his guests. The incident described by the landlord and two witnesses who participated in this hearing reveal that the tenant has significantly disturbed the landlord and his guests. The landlord testified that the tenant threatened to smash the landlord's guest's "head into concrete." The witness who was the target of this threat (GK) said that the tenant yelled and swore at him and threatened that he was going "to destroy him." The other witness (JM) testified that the tenant "went nuts" and threatened to "smash his (GK's) head in." This other witness said that the tenant sounded very violent and expressed concern for both Witness GK and for the landlord.

In addition to the sworn testimony and written evidence from the landlord about noise, Witness JS testified that he often heard very loud arguments between the tenant and others coming from the tenant's rental unit. When this witness lived next door to the rental property, he used to be awakened sometimes by the racket being caused by the

tenant. The landlord testified that he called the police on one occasion, who attended the premises regarding the noise being caused by the tenant.

The tenant provided little evidence to refute the sworn testimony provided by the landlord and his witnesses, other than his claim that they were all conspiring against him because they are all friends. He said that he knew that the incident in the landlord's garage was being taped on a camera the landlord has in his garage. He had little to say to refute the specific accounts given by the landlord and his witnesses regarding that incident. He noted that police were not called on that occasion.

I find that the landlord has established that he had grounds to issue the 1 Month Notice to the tenant. I find that the tenant has significantly interfered with and unreasonably disturbed the landlord and his guests. This tenancy cannot be allowed to continue due to the threatening behaviours exhibited by the tenant as reported by the landlord and his witnesses. For these reasons, I dismiss the tenant's application to cancel the 1 Month Notice and allow the landlord's application for an Order of Possession.

I order that this tenancy end by 1:00 p.m. on July 31, 2013, the corrected effective date of the landlord's 1 Month Notice. I also note that there is undisputed evidence that the landlord has accepted a payment from the tenant in the amount of \$750.00 for use and occupancy only for the period from July 1, 2013 until July 31, 2013. By accepting this payment, the landlord cannot end this tenancy before July 31, 2013.

#### Analysis- Landlord's Application for a Monetary Order

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. The landlord's application for a monetary award for damage places the onus on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

At the hearing, the landlord testified that there was no provision in the Agreement, enabling him to increase the amount of the tenant's rent if the tenant did not complete repairs that the landlord claimed were a tradeoff for additional rent that the landlord would otherwise have charged the tenant. Similarly, there is no provision in the Agreement to allow the landlord to retroactively increase the tenant's rent to cover heat

or hydro, as has been claimed by the landlord in his application for a monetary award. For these reasons, I dismiss the landlord's application for a monetary award for losses in income, extra charges for utilities, and loss of rent due arising out of the tenant's failure to complete renovations and repairs in a timely fashion.

The landlord provided written evidence that the rental unit was not ready for occupation when the tenancy commenced, so it is very difficult to determine damage the landlord maintained has arisen during the course of this tenancy. The landlord has not submitted any completed move-in inspection report nor is there any clear sense of damage that was existing when the tenancy commenced as compared to the present situation. The landlord has not provided receipts for damage claimed in his application. I dismiss the landlord's claim for a monetary award for damage without leave to reapply.

I also find that the landlord has provided insufficient evidence to support his claim for compensation for work that he has performed at the rental unit. I find that he would clearly not be entitled to reimbursement for some of these items (e.g., time spent interacting with police about this tenancy); for others, he has provided insufficient evidence of any entitlement to a monetary award (e.g., time spent cleaning up yard due to damage to weed whacker).

I find that the landlord has failed to demonstrate his entitlement to a monetary award for damage or losses, other than for a portion of his filing fee. As the landlord has been partially successful in an important segment of his application, I allow the landlord to recover \$50.00 of his \$100.00 filing fee from the tenant. I dismiss the remainder of the landlord's application for a monetary Order without leave to reapply.

#### Analysis – Tenant's Application for a Monetary Order

I find that the tenant's claim is for the landlord's alleged failure to pay the tenant for work the tenant undertook for the landlord. The landlord claimed that the tenant received a reduced rent for his willingness to help with repairs and restore the upper rental unit to a habitable state of repair. There is no reference to any employment relationship in the Agreement the parties signed when this tenancy began. The only written reference to repair or renovation work to be performed by the tenant or allowed by the landlord entered into written evidence was the December 2, 2011 document, a document signed only by the landlord. As I noted at the hearing, the December 2, 2011 document specifically notified the tenant that the landlord had to be on-site when any repairs were conducted and "that no repairs or modifications take place without written permission." The tenant confirmed that other than this document, the tenant did not receive written permission from the landlord to conduct repairs.

I find that the tenant's claim is a contractual issue that lies outside the *Act*. The tenant is claiming that he provided services to the landlord for which he was not compensated. Any remedy that the tenant may have for the type of compensation he has claimed would lie outside the *Act*. For that reason, I am unable to consider the tenant's application for a monetary award as the tenant is claiming compensation for items that are beyond my jurisdiction under the *Act*. I therefore have no jurisdiction to render a decision with respect to the monetary portion of the tenant's application.

### Conclusion

I dismiss the tenant's application to set aside the 1 Month Notice. I allow the landlord's application to end this tenancy on the basis of the 1 Month Notice. The landlord is provided with a formal copy of an Order of Possession effective at 1:00 p.m. on July 31, 2013, requiring the tenant to vacate the rental premises by that time and date. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

With the exception of the landlord's application to recover his filing fee from the tenant, I dismiss the landlord's application for a monetary Order without leave to reapply. I allow the landlord to recover \$50.00 of his filing fee from the tenant. I issue a monetary Order to that effect. The landlord is provided with these Orders in the above terms and the tenant must be served with this Order 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 decline to hear the tenant's application for a monetary award as I have no jurisdiction to consider his application for a monetary award for the items claimed.

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: July 19, 2013

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Residential Tenancy Branch



