



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Colliers International  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, MNDF, OLC, ERP, RP, PSF, RR, FF

### Introduction

This hearing was convened in response to applications by the Parties under the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The Tenant applied on July 5, 2013, with an amendment on July 5, 2013, for:

1. An order cancelling a notice to end tenancy – Section 46;
2. A Monetary Order for compensation - Section 67;
3. An Order for the Landlord to comply with the Act - Section 62;
4. An Order for emergency and other repairs to the unit – Section 32;
5. An Order for the Landlord to provide services required by law – Section 65;
6. An Order allowing the Tenant to reduce rent for services/facilities agreed upon but not provided – Section 65; and
7. An Order to recover the filing fee for this application - Section 72.

The Landlord applied on July 24, 2013 for:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent or utilities - Section 67;
3. A Monetary Order for compensation – Section 67;
4. An Order to retain all or part of the security deposit – Section 38; and
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.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the Tenant entitled to a cancellation of the notice to end tenancy?

Is the Landlord entitled to an order of possession?

Is the Landlord entitled to the monetary amounts claimed?

Is the Tenant entitled to repairs, services and a rent reduction?

Are the Parties entitled to recovery of the filing fee?

Preliminary Matter

At the onset of the Hearing the Tenant stated that the Landlord's evidence package was not received by the Tenant. The Landlord stated that the evidence package, application and notice of hearing were sent to each Tenant by registered mail. The Landlord provided a copy of the postal tracking number and mail receipt. Based on the postal evidence of the Landlord, I found that the Tenant had been served with the materials as required under the Act. I also reviewed the materials in the Landlord's evidence package and noted that all of the Landlord's evidence was comprised of documents either sent by the Tenant, signed by the Tenant, or sent to the Tenant from the Landlord and the Tenant did not dispute knowledge of those documents although the Tenant states that he had never received a copy of the tenancy agreement.

Background and Evidence

The Landlord's Agent (the "Agent") states that the tenancy started on November 1, 2011 and that the current rent of \$830.00 is payable monthly on the first day of each month. The Landlord provided a copy of the tenancy agreement and a copy of a rent increase notice. The Tenant states that the tenancy did not start on November 1, 2011 but does not provide another tenancy start date despite being asked. The Tenant also disputes the amount of rent stated by the Landlord. The Tenant states that he only pays \$415.00. The Tenant further states that the co-tenant pays the difference between this amount and "\$830.00". The Parties agree that the Landlord collected \$400.00 as a

security deposit at the outset of the tenancy. The tenancy agreement provides for a late rent payment fee of \$25.00.

The Agent states that the Tenants failed to pay rent for July 2012 and that on July 12, 2013 a 10 day notice to end tenancy for unpaid rent (the "Notice") was posted on the rental unit door. The Tenant states that he did not receive a copy of the Notice. The Landlord provided an affidavit of service of the Notice. It is also noted that a copy of the Notice was provided by the Tenant to the Residential Tenancy Branch on July 5, 2013 as evidence for this hearing. The Tenant states that he did not pay rent for July and August 2013 as the Landlord has failed to make repairs and has breached his quiet enjoyment. The Landlord claims unpaid rent of \$1,660.00 and a late fee of \$25.00.

The Tenant states that since late April 2013 the Agent has been aggressive and hostile towards the Tenant on several occasions. The Tenant states that he wanted to move into another unit in the building and that after viewing a vacant unit the Landlord became threatening and unbalanced. The Tenant states that after asking for a rent reduction the Agent, looked enraged, put his hands in the air and asked the Tenant why he was trying to negotiate and that the Agent did not want to be involved. The Tenant states that he would text the Agent about problems and the Agent told him to stop texting and that the Agent did not want to be involved. The Tenant states that on one occasion the Tenant asked the Agent how the intercom worked and the Agent walked towards the Tenant with squared shoulders asking "is this another one of your games?". The Tenant states on one occasion the Landlord refused to say hello to the Tenant and did not ride up the elevator with the Tenant. The Tenant states that as the Agent is around often the Tenant felt uncomfortable and feels stress and anxiety that has not stopped. The Tenant claims compensation of \$830.00.

The Agent states that the Tenant and co-tenant were having differences and had been attempting to involve him in their disputes by sharing personal stories. The Agent states that he told both Tenants to stop trying to involve him. The Agent states that the Tenant has sent numerous texts to the Agent reciting the fights between the Tenants. The

Agent states that he informed the Tenant to only see him in the office and that the Landlord advised the Agent not to have any verbal communication with the Tenant at all. The Landlord states that he was irritated by the Tenant's demands. The Landlord denies being aggressive or hostile and denies making any movements or gestures that would indicate aggression or hostility.

### Analysis

Section 26 of the Act provides that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement. Given the notice to end tenancy, the tenancy agreement, notice of rent increase and the Tenant's evidence that the Tenant did not pay rent for July and August 2013, I find that the Landlord has established an entitlement to an order of possession. I also find that the Landlord has established an entitlement to unpaid rent of **\$1,660.00** and a late fee of **\$25.00**. As the Landlord has been successful with its application I find that the Landlord is also entitled to recovery of the **\$50.00** filing fee for a total entitlement of **\$1,735.00**. Setting the security deposit of **\$400.00** plus zero interest off the entitlement leave **\$1,335.00** owed by the Tenants to the Landlord.

Section 28 of the Act provides that a tenant is entitled to quiet enjoyment including rights to reasonable privacy and freedom from unreasonable disturbance. Although the Tenant claims to have been disturbed by the Landlord's behavior, given the description of the Landlord's behavior by the Tenant and considering the Landlord's evidence of the Tenant's behavior in relation to the dispute between the co-tenants, I find that the Landlord's behavior while perhaps uncomfortable to the Tenant is nothing significant and does not constitute any sort of unreasonable disturbance of the Tenant's enjoyment of the unit. I therefore dismiss the Tenant's claim for compensation. As the tenancy is ended and the Tenant must move out of the unit, I dismiss the remaining claims of the Tenant and decline to award recovery of the filing fee.

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 \$400.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **\$1,335.00**. 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: September 20, 2013

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Residential Tenancy Branch

