



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNDC, RR, MDSD & FF

### Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify.

The Registry schedules hearings for 1 ½ hours. After approximately one hour into the hearing it appeared that it was going to be difficult to finish the hearing in the allotted time. I asked the parties whether they wished to adjourn the hearing if we were unable to complete it in the allotted time or whether they wished to shorten the presentation of evidence. Both parties stated they wished to finish the hearing today. I asked if they wished to provide written submission. Both parties stated they did not think it was necessary. As a result the cross examination of some of the witnesses and the final submissions were shortened.

I find that the 10 day Notice to End Tenancy was sufficiently served on the Tenant by posting on August 2, Further I find that the Application for Dispute Resolution/Notice of Hearing filed by each party was sufficiently served on the other. With respect to each of the applicant's claims I find as follows:

### Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the landlord is entitled to an Order for Possession?
- b. Whether the landlord is entitled to A Monetary Order and if so how much?
- c. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- d. Whether the landlord is entitled to recover the cost of the filing fee?
- e. Whether the tenant is entitled to a monetary order and if so how much?
- f. Whether the tenant is entitled to a recover the cost of the filing fee?

Background and Evidence:

The parties entered into a written tenancy agreement that provided that the tenancy would start on March 1, 2013 and continue for a one year fixed term. The rent is \$2600 per month payable on the first day of each month. The tenant paid a security deposit of \$1300 prior to the start of the tenancy.

The tenant(s) testified he experienced problems with his toilets. He stated that he notified the landlord and the landlord sent a handyman to repair the them. The tenant produced a letter from the handyman that states he fixed a number of problems with the unit. It further states "Of all the flaws I fixed, the flushing system was not fixed. The flushing system does not have enough water to flush and the whole tank needs to be replaced. I have come on 4 separate days to attend to the problem prior to the washroom flooding. The invoice marked 004/13 show one incident of the 4 times. I previously attended to fix this toilet and billed the Landlord/Agent. I did not receive permission from the landlord to change the toilet and therefore have left it as is."

In early July the toilet overflowed causing water damage to 5 rooms. The tenant hired RotoRouter plumbing and drain for emergency repairs. The work sheet describes a blockage and a problem with the flushing system. The landlord reimbursed the tenant the cost of this emergency repairs which was over \$500.

Unfortunately the parties got into a dispute primary revolving around who was going to pay the cost of removing the tenant's belongings in order for the restoration contractors

to come and make repairs. The restoration contractors have made emergency repairs but the second stage involving the removal of the flooring needs to be completed. The landlord testified the tenant is refusing to give access. The tenant takes the position that the landlord must pay the cost of removing his belongings and the landlord will be held liable if things go missing.

The tenant failed to pay the rent for August when due. The tenant testified that on three occasions he attempted to give the landlord's agent a cheque but they refused to accept it saying they are friends of the owner but not agents. The representative of the landlord testified the tenant had previously paid the rent by direct deposit into the landlord's account. He testified he lost his phone when out of the country and did not have the landlord's account information. The representative testified that she would give that information to him on a monthly basis. At any rate there are letters from the landlord's solicitor proposing that the rent be paid to the solicitor. The tenant has not paid the rent for August and September.

Both parties state they want the tenancy to continue. The conduct of both parties suggest that both want the tenancy to end.

Section 26(1) of the Residential Tenancy Act provides as follows:

**Rules about payment and non-payment of rent**

**26** (1) 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, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Settlement:

The parties reached a settlement with respect to a number of issues. The only outstanding issue is whether the tenant is entitled to compensation for the cost of moving and the reduced value of the tenancy and if so how much.

I recorded the settlement pursuant to section 63(2) of the Residential Tenancy Act as follows:

- a. The parties mutually agree that the tenancy shall end on September 20, 2013 and the tenant is responsible to pay the rent for August (\$2600) and for the period September 1, 2013 to September 20, 2013 (\$1733).
- b. The landlord releases the tenant from claims for loss of rent for the remaining portion of the fixed term tenancy.
- c. The parties request that the arbitrator issue an Order for Possession for September 20, 2013.

As a result of the settlement I granted an Order for Possession effective September 20, 2013. I further determined the landlord is entitled to recover the rent August and September (from September 1, 2013 to September 20, 2013 in the sum of \$1733) for a total sum of \$4333 plus \$50 for the cost of the filing fee for a total of \$4383 subject to the tenant's claim for compensation.

Order of Possession:

**I determined the landlord was entitled to an Order for Possession effective**

**September 20, 2013.** The tenant must be served with this Order as soon as possible.

Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

Tenant's Claim:

The Application for Dispute Resolution filed by the tenant seeks a monetary order in the sum of \$6791.95. The tenant does not break down this claim with particulars.

However, he submitted the landlord was negligent in failing to fix the toilet in a timely fashion. He stated he is entitled to moving costs totaling \$3000. He is also entitled to the cost of his bed as it has been contaminated by grey water. Further he has been ill which he submits is caused by the bacteria from the grey water. The tenant also claims that the for the reduced value of the tenancy caused by the inconvenienced caused because the toilets were not properly fixed. It resulted in limiting his entertaining. Friends would have to use the toilet in the master bedroom instead of the main toilet and he was prevented from walking in his rental unit in without feet apparel.

The landlord submits the tenant is not entitled to any compensation. He submits the tenant has failed to provide evidence as to illness or damage to his belongings. He also submits the reason for the problems is the refusal of the tenant to give the landlord access to the rental unit and this has compromised the landlord's property as restoration work needs to be completed.

After hearing the disputed evidence of the parties I made the following findings of fact:

- I determined there was a problem with the flushing system of the toilet in the main bathroom which is not the tenant's responsibility.
- I determined the toilet overflowed causing in early July causing significant damage to the rental unit. The landlord failed to present sufficient evidence to prove the tenant was responsible for this overflow. The landlord reimbursed the tenant the cost of the plumber. I determined the tenant is not responsible for the overflow.
- I determined the tenant failed to pay the rent when due for the month of August. While the representatives of the landlord were disingenuous when saying they were not acting as agents for the owner, the tenant had an opportunity to pay the rent to the solicitor for the landlord but chose not to do so. Section 26 of the Residential Tenancy Act referred to above provides that a party cannot withhold the rent unless they have obtained an order to do so from an arbitrator except for

emergency repairs. The landlord had the right to end the tenancy based on non-payment of rent.

- I determined the tenant is not entitled to the cost of moving. The tenancy is coming to an end because of the tenant's failure to pay the rent when due and subsequent agreement to end the tenancy. The Residential Tenancy Act provides that an innocent party has the obligation to mitigate or act reasonably to lessen his loss. If the tenant felt that landlord was responsible to pay his moving cost the appropriate and easiest method would have been to pay the cost of moving himself and then filed an Application for Dispute Resolution claiming against the landlord.
- I determined the tenant is not entitled to compensation for damage goods. The tenant failed to present any evidence to support this claim.
- I determined the tenant failed to prove that his illness was caused by the grey water. He failed to present any medical evidence.
- However, I determined there is a reduced value to the tenancy caused by the overflow. The full use of the rental property has been limited. His entertaining has been limited and it has caused significant inconvenience. The landlord could have avoided the problem by replacing the toilet in the first instance. In the circumstances I determined the tenant has established a claim against the landlord in the sum of \$600 plus \$50 for the cost of the filing fee (reduced to reflect the limited success of the tenant) for a total of \$650.

Summary:

**I determined the landlord has established a claim against the tenant in the sum of \$4383 including the cost of the filing fee. I further determined the tenant has established a claim against the landlord in the sum of \$650. After setting off one claim against that of the other I ordered the Tenant to pay to the Landlord the sum of \$3733.**

Security Deposit

**I determined the security deposit plus interest totals the sum of \$1300. I ordered the landlord may retain this sum thus reducing the amount outstanding under this monetary order to the sum of \$2433.**

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial 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 03, 2013

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Residential Tenancy Branch

