



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes: CNC, MNDC, RR  
OPC

### Introduction

This hearing was scheduled in response to the tenant's application for cancellation of a notice to end tenancy for cause / a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / and permission to reduce rent for repairs, services or facilities agreed upon but not provided. Both parties attended and gave affirmed testimony.

During the hearing the landlords confirmed that they seek an order of possession in the event the tenant's application for cancellation of the notice does not succeed.

### Issue(s) to be Decided

Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement.

### Background and Evidence

There is no written tenancy agreement in place for this tenancy. Various, the parties claim that the tenancy began either on August 1 or September 1, 2012. Monthly rent is \$700.00, and a security deposit of \$350.00 was collected.

Pursuant to section 47 of the Act which addresses **Landlord's notice: cause**, the landlords issued a 1 month notice to end tenancy for cause dated September 10, 2013. A copy of the notice was submitted in evidence. The date shown on the notice by when the tenant must vacate the unit is October 30, 2013. Reasons identified on the notice in support of its issuance are as follows:

Tenant is repeatedly late paying rent

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

Subsequently, the tenant filed an application for dispute resolution on September 4, 2013, and later amended her original application on September 17, 2013.

### Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: [www.rto.gov.bc.ca](http://www.rto.gov.bc.ca)

The various aspects of the respective applications and my related findings are set out below.

## **LANDLORDS**

### **Order of possession**

#### *Tenant is repeatedly late paying rent*

There is conflicting testimony around what understandings may have been reached between the parties concerning the day when rent is due and payable. The landlords testified that rent is due and payable in advance on the first day of each month. However, the landlords appear to have accepted payment after that date without providing the tenant with any written notice that rent must be paid on the first day of each month. 9 months identified by the landlords when rent has been paid after the first of the month are as follows:

**2012:** November

**2013:** January, February, March, April, May, June, July & September

Further to the payment of rent after the first of the month, as above, the landlords testified that rent was not paid in full until a second payment was made in the case of June and September 2013.

Residential Tenancy Policy Guideline # 38 speaks to “Repeated Late Payment of Rent,” in part as follows:

Three late payments are the minimum number sufficient to justify a notice under these provisions.

I find that as the landlords have accepted payment of rent after the first day of each month for a lengthy period of time without formal notice to the tenant that rent must be

paid in advance on the first day of each month, they have waived their entitlement to an order of possession on the basis of late payment with respect to 7 of the 9 months in question. However, in view of the 2 installment payments made in each of June and September 2013, I find that the tenant has presently been late in her payment of rent on these 2 occasions.

Going forward, effective from January 1, 2014, I hereby order that the due date for payment of rent in full for this tenancy is the first day of each month.

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

It is understood that this ground has been cited as a result of the dislodging of crown moulding from above the double door entrance to the unit. This is said to have occurred about 1 month after the tenancy began when the tenant undertook to hang a decorative figurine from the moulding. It is not certain whether the moulding is broken or whether it simply requires re-affixing to its original location. Further, it is unclear what understandings may have been reached between the parties in relation to the display of decorative items from or around the moulding. I am persuaded that the mishap was not the result of the tenant's reckless disregard for the landlord's property. In the result, I am unable to find that the landlords have established entitlement to an order of possession on the basis of this ground with respect to the incident in question.

Following from all of the above, the 1 month notice to end tenancy is hereby set aside, and the tenancy presently continues in full force and effect.

## **TENANT**

\$420.00 (12 months x \$35.00 per month): *reduction in rent arising from faulty dishwasher*

There appears to be no dispute that the dishwasher was not fully functional from early in the tenancy, that the tenant informed the landlords of this in writing in mid October 2012, that a repair person attended the unit in late October 2012, that the dishwasher did not remain fully functional thereafter, and that the dishwasher was replaced earlier this month (October 2013.) In the result, I find that the tenant has established entitlement to compensation in the amount of **\$360.00**, which is calculated on the basis of \$30.00 per month (approximately \$1.00 per day), from October 15, 2012 to October 14, 2013. I order that this amount may be withheld from the next regular payment of monthly rent.

In view of the above finding, the tenant's alternate applications for rent reduction of \$55.00 per month for 14 months, and / or a reimbursement of all rent paid since the time when tenancy began are hereby dismissed.

*\$240.00: reimbursement of the cost (including installation) of 3 window screens*

The tenant had 3 window screens installed in the unit at her own expense. There is no conclusive documentary evidence that screens were understood to have been included with the unit when tenancy began, or that the parties entered into any agreement concerning the costs for purchase and installation of the screens after tenancy began. Accordingly, this aspect of the application is hereby dismissed.

*\$5,000.00: alleged breaches of the right to quiet enjoyment ("mental distress and harassment")*

Section 28 of the Act speaks to the **Protection of tenant's right to quiet enjoyment**, and Residential Tenancy Policy Guideline # 6 addresses "Right to Quiet Enjoyment." While for a variety of reasons, a degree of acrimony has developed in the relationship between the parties, I find that the tenant has failed to meet the burden of proving there have been breaches of her right to quiet enjoyment. In the result, this aspect of the application for related compensation is hereby dismissed.

*\$30.00: costs arising from use of registered mail*

It is understood that the tenant has withdrawn this aspect of her application. Nevertheless, for the information of the parties, section 72 of the Act addresses **Director's orders: fees and monetary orders**. With the exception of the filing fee for an application for dispute resolution, the Act does not provide for the award of costs associated with litigation to either party to a dispute. Accordingly, an application for recovery of costs arising from use of registered mail would be dismissed.

### Conclusion

The 1 month notice to end tenancy for cause is hereby set aside, with the result that the tenancy continues uninterrupted.

Effective January 1, 2014, the due date for payment of rent in full for this tenancy is the first day of each month.

I hereby order that the tenant may withhold **\$360.00** from the next regular payment of monthly rent. All other aspects of the tenant's application are hereby dismissed.

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: October 16, 2013

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Residential Tenancy Branch

