



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Nacel Properties Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR, MNDC, FF, OPR, MNR, MNSD, FF

### Introduction

This hearing was convened in response to applications by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The Tenant applied on August 16, 2013 and September 5, 2013 for:

1. An Order cancelling a Notice to End Tenancy – Section 46;
2. A Monetary Order for compensation or loss - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord applied on September 11, 2013 for:

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

Are the Parties entitled to the monetary amounts claimed by each?

Are the Parties entitled to recovery of their respective filing fees?

### Background and Evidence

The tenancy began on September 1, 2011. Rent of \$1,560.00 is payable in advance on the first day of each month. At the outset of the tenancy, the Landlord collected \$780.00 as a security deposit from the Tenant. The Tenant failed to pay rent for August and September 2013 and on September 2, 2013 the Landlord served the Tenant with a 10 day notice to end tenancy for unpaid rent (the "Notice") by posting the Notice on the door. The Tenant states that he had not paid the rent as he does not have sufficient funds. The Tenant states that he has not moved out of the unit and is concerned that due to construction on the elevators that he will not be able to move his furniture out as required. The Landlord states that they guarantee that despite the work on the elevator the Tenant will be provided with the elevator to move out his belongings. The Landlord claims unpaid rent of \$3,120.00

The Tenant states that he has lost quiet enjoyment of the unit due to water pipe repairs to the unit and the common area. The Tenant states that repairs were made to his unit causing him to move his furniture, on a daily basis for two weeks in October and for a week in November 2012. The Tenant states that the water was turned off multiple times during December 2012 and for about 6 times in January 2013. The Tenant states that he lost use of the pool for approximately 5 days in February 2013. The Tenant states that he works out of the unit during the day but uses the pool area in the mornings. The Parties agree that the Tenant received compensation of \$200.00 due to the work. The Tenant states that this amount was insufficient for the amount of disruption.

The Landlord states that the contractor scheduled their work so as to minimize disruptions to the tenants and as a result the work took longer. The Landlord states that the Tenant was only disturbed over a two week period on approximately 5 days in total, that the amount provided to the Tenant is sufficient to compensate for this amount of time and that the work took place in the hallway and bathroom of the unit. The Landlord states that the pool was accessible every day after 4:00 p.m. and during the day whenever the work was not being undertaken. The Landlord states that when the pool

was closed it was only for a couple of hours each day. The Landlord states that no work was done on the Tenant's floor in November 2012.

### Analysis

Section 46 of the Act requires that upon receipt of a 10 notice to end tenancy for unpaid rent (the "Notice") the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. Although the Tenant made an application to dispute the notices, based on the Tenant's evidence that rent has not been paid and considering that the Tenant's reasons for not paying the rent do not provide any relief from the obligation to pay when it is due under the tenancy agreement, I find that the Landlord has substantiated that rent was unpaid and that the Notice is valid. I therefore dismiss the Tenant's claim for a cancellation of the notices to end tenancy. Further I find that the Landlord is entitled to an **Order of Possession** and to a monetary entitlement of **\$3,120.00** in unpaid rent. The Landlord is entitled to recovery of the **\$50.00** filing fee for a total monetary amount of **\$3,170.00**.

In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established. Although the Tenant seeks a greater amount of compensation, based on the Tenant's evidence I find that the disruption to the Tenant during the work on the pipes was minimal and that the Tenant has been sufficiently compensated for this disruption, I therefore dismiss the Tenant's claim for compensation. As the Tenant has not been successful with its claims, I decline to award recovery of the filing fees for both applications.

Setting the security deposit of **\$780.00** plus zero interest off the Landlord's entitlement leaves **\$2,390.00.00** owed by the Tenant to the Landlord.

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 \$780.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **\$2,390.00**. 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: October 15, 2013

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Residential Tenancy Branch