



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR & 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. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the 10 day Notice to End Tenancy was personally served on the Tenant on September 9, 2013. Further I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the Tenant on or about September 17, 2013. 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 recover the cost of the filing fee?

### Background and Evidence

The respondent has lived in the rental unit for several years and has taken over from a previous tenant. The present rent is \$1250 payable on the first day of each month. The

term is a month to month tenancy. The tenant has not paid a security deposit. The tenant continues to live in the rental unit.

The landlord testified the tenant has failed to pay the rent for the months of July, August, September and October and the sum of \$5000 remains outstanding ( $\$1250 \times 4 = \$5000$ ). The tenant does not dispute that he has failed to pay the rent for the last 4 months. However, he testified that when he took over from the previous tenant in 2010 he paid that tenant's share of the rent totaling \$1875 and the landlord agreed this could be the security deposit. He further testified that the rental unit has been broken into several times and his money has been stolen. Also, he grows medical marijuana. In August a pipe burst ruining his marijuana and some of his personal belongings. He testified he paid the plumbing bill of \$1228.

The landlord disputes the tenant's evidence. She testified she never agreed that he could use the \$1875 as a security deposit. Further, she testified the tenant never advised him of the plumbing problem so that she could get her own plumber. He only mentioned it after he allegedly paid the plumber.

### Analysis

After carefully considering all of the evidence I determined the tenant has failed to pay the rent for the last 4 months and the sum of \$5000 remains outstanding. The tenant has failed to establish that he is entitled to deduct from current rent any month he paid the landlord on behalf of the previous tenant. The landlord is entitled to receive the rent and if the tenant paid rent on behalf of a previous tenant recovery of that money is between the two tenants. Further, the tenant failed to prove that landlord agreed the \$1875 was to be held as a security deposit. I prefer the landlord's evidence to that of the tenant on this issue as it is more consistent with how the parties have conducted themselves.

The Residential Tenancy Act provides that the tenant must pay the rent even where the landlord has failed to do what was required under the tenancy agreement or Residential Tenancy Act. The tenant failed to obtain the landlord's permission prior to hiring the plumber and thus this is not an emergency repair as defined by the Residential Tenancy Act. The tenant has not filed an Application for Dispute Resolution to make a claim against the landlord. There is no basis to set off the plumbing bill from the amount owed for rent where the tenant has failed to file a claim and obtain a monetary order as this was not an emergency repair as defined by the Act.

Analysis - Order of Possession:

I determined the landlord was entitled to an Order for Possession. There is outstanding rent. The Tenant has not made an application to set aside the Notice to End Tenancy and the time to do so has expired. In such situations the Residential Tenancy Act provides the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date.

**Accordingly, I granted the landlord an Order for Possession. The landlord stated she agreed the tenant could stay until the end of October. As a result I set the effective date of the Order for Possession for October 31, 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.

Analysis - Monetary Order and Cost of Filing fee

**I determined the tenant has failed to pay the rent for the month(s) of July, August September and October and the sum of \$5000 remains outstanding. I granted the landlord a monetary order in the sum of \$5000 plus the sum of \$50 in respect of the filing fee for a total of \$5050.**

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: October 18, 2013

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Residential Tenancy Branch

