



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPC, OPR, MNR, MNDC, FF, CNC, CNR, AAT, LAT, RR, DRI

### Introduction

This hearing was convened by way of conference call in response to an application made by the landlord for an Order of Possession for cause and unpaid rent or utilities. The landlord also applied for: a Monetary Order for unpaid rent or utilities, for money owed or compensation for damage or loss under the *Residential Tenancy Act* (referred to as the “Act”); and to recover the filing fee from the tenant for the cost of making the application. The tenant applied for the following issues:

- To cancel the notice to end tenancy for cause and unpaid rent or utilities
- For money owed or compensation for damage or loss under the Act
- To allow the tenant access to the unit
- To authorise the tenant to change the locks to the rental unit
- Allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided
- To recover the filing fee from the landlord for the cost of the application
- To dispute an additional rent increase

The landlord and tenant appeared for the hearing and no issues in relation to the service of the hearing documents and amended applications of both parties were raised. The tenant confirmed receipt of the landlord’s documentary evidence used in this hearing. However, the landlord denied receipt of the tenant’s evidence submitted prior to the hearing and the tenant was unable to prove this had been served to the landlord. Therefore, I have not considered the tenant’s documentary evidence in my decision.

At the start of the hearing the tenant’s portion of the application requesting the recovery of the filing fee was dismissed because the tenant had the filing fee waived by the Residential Tenancy Branch on making the application.

During the hearing, the tenant disclosed that she was about to leave the rental suite in the next two hours. As a result, the tenant was agreeable to the landlord being issued with an Order of Possession effective 2 days after service on the tenant. As a result, I dismissed the tenant's application to: cancel the notices to end tenancy, to allow the tenant access to the unit, and authorisation to change the locks, to dispute an additional rent increase, as these are now moot points. As a result, I dealt with both parties' monetary claims accordingly by considering their affirmed testimony and documentary evidence submitted prior to this hearing.

#### Issue(s) to be Decided

- Is the landlord entitled to monetary losses for unpaid rent and for damage or loss under the Act?
- Is the tenant entitled to monetary compensation for damage or loss under the Act?

#### Background and Evidence

Both parties agreed that the tenancy started on September 11, 2012 on a month to month basis. No written tenancy agreement was completed but rent was established at \$375.00 payable by the tenant to the landlord on the first day of each month; although the tenant only paid a prorated amount of \$300.00 for the first month. Both parties also agreed that in July, 2013 the landlord decreased the rent payable by the tenant to \$350.00 per month. The landlord did not request a security deposit at the start of the tenancy.

The landlord testified that the tenant only paid \$320.00 in rent for the month of December, 2013 leaving an outstanding balance of \$30.00. As a result, the tenant was served with a notice to end tenancy for unpaid rent or utilities on December 4, 2013. The notice was provided as evidence for this hearing. The landlord testified that the tenant has also failed to pay for January, 2014 in the amount of \$350.00. Although the landlord made a monetary claim for \$1,398.00, her claim is only for the outstanding rent of \$380.00.

The tenant testified that she did not pay the landlord \$30.00 for the month of December, 2013 because the landlord had failed to provide her with internet and cable service. The tenant did not pay for January, 2013 rent because she wanted to deal with this issue in this hearing.

The landlord testified that at the start of the tenancy the tenant was not promised any cable because the rental suite only allows three Telus Optik lines which are being used by the other renters in the same suite. The tenant had told the landlord that she had a digital television antenna that she would use to get cable service. The landlord testified that there was no agreement with the tenant to provide cable service at the start of the tenancy. However, the landlord testified that the rent did include wireless internet and that the tenant was provided with the code to access this service.

The tenant testified that cable was included in her rent and that the landlord had allowed her to splice into the cable lines to receive cable service. The tenant testified that the code provided by the landlord did not work and she had to get an internet computer pen to get service.

The landlord responded stating that the splicing of the line was to do with Shaw cable which was not a service provided by the landlord and that the reason why the wireless code did not work for the tenant was because of a problem with the tenant's laptop, not the wireless service. The landlord offered the tenant to call Telus who informed her that the issue was with her laptop and not the wireless service. The landlord testified that none of her other renters have issues with the wireless service in the rental suite.

In relation to the tenant's monetary claim of \$4,800.00, the tenant testified that she had come to this arbitrary amount based on the fact that she could not live under the difficult conditions created by the landlord, she couldn't use the kitchen, she lost valuable sleep over the issues and claims loss of income through her wages. The landlord denied the tenant's monetary claim.

### Analysis

Section 26(1) of the Act states that a tenant must pay rent when it is due whether or not a landlord complies with the Act.

Based on the above testimony of the landlord and tenant, I find that the tenant has not paid rent to the landlord in the amount of \$380.00 and I find that the tenant was not entitled to make any deductions or not pay rent under the Act. If the tenant had an issue about services that were not being provided by the landlord, then the tenant should have addressed these issues using remedies available to her under the Act via dispute resolution. Instead the tenant is now choosing to use these issues, which should have been dealt with at the start of the tenancy, to not pay rent which is not permitted under the Act. The landlord is therefore entitled to \$380.00 in unpaid rent.

The tenant's monetary claim was disputed by the landlord and I find that the tenant has not provided any corroborative evidence that enables me to award her claim for loss and quiet enjoyment of the rental suite. As a result, I dismiss the tenant's monetary claim.

As the landlord has been successful in her claim, she is also entitled to recover from the tenant the \$50.00 filing fee for the cost of this application pursuant to Section 72(1) of the Act. Therefore, the total amount payable by the tenant is \$430.00.

### Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord effective **2 days after service on the tenant**. This order may then be enforced in the Supreme Court as an order of that court if the tenant fails to vacate the rental unit.

I further grant a Monetary Order in the amount of **\$430.00** in favour of the landlord pursuant to Section 67 of the Act. This order must be served on the tenant and may then be filed in the Provincial Court (Small Claims) and enforced as an order of that court if the tenant fails to make payment.

The tenant's application is dismissed in its entirety without leave to re-apply.

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: January 27, 2014

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Residential Tenancy Branch

