



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **Decision**

### **Dispute Codes:**

MNDC, OPR, MND, FF

### **Introduction**

This Dispute Resolution hearing was convened to deal with an Application by the landlord seeking an Order of Possession and a monetary order based on a Ten Day Notice to End Tenancy for Unpaid Rent under the Act and a cross application by the loss or damage under the Act.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

Although the landlord's application indicated they seek an Order of Possession, it was established that the tenant had vacated on December 27, 2013. Therefore the matter of possession has been resolved and this hearing will only proceed to determine the monetary claims.

### **Issues to be Decided for the Tenant's Application**

Is the tenant entitled to monetary compensation under section 67 of the Act?

### **Issues to be Decided for the Landlord's Application**

Is the landlord entitled to monetary compensation under section 67 of the Act.

### **Preliminary Matter**

No copy of the Ten Day Notice to End Tenancy for Unpaid Rent was in evidence.

Under section 46 of the Act, an Order of Possession and monetary claim for rental arrears is based on a valid and enforceable Ten-Day Notice to End Tenancy, properly served on the tenant. The burden of proof is on the applicant claiming compensation to prove that the tenancy exists, that this debt exists and that they served the tenant with a valid and enforceable Ten Day Notice to End Tenancy for Unpaid Rent.

I find that the informational material given to the applicant at the time they applied for the dispute resolution hearing contains detailed data and instructions. The “*Notice of a Dispute Resolution Hearing*” page states in part:

“*GENERAL INFORMATION about your responsibility and the hearing*”,

1. “**Evidence to support your position is important and must be given to the other party and to the Residential Tenancy Branch before the hearing. Instructions for evidence processing are included in this package. Deadlines are critical.**” (My emphasis)
2. *Residential Tenancy Branch Rules of Procedure apply to the proceedings: For details, contact the RTB or a Service BC Office or check online at {<http://www.rto.gov.bc.ca/>}*
3. *You (or your agent) must participate in the hearing at the time and date assigned.*
4. *The hearing will continue without you if you or your representative is not in attendance.*
5. *A final and binding decision will be issued once the hearing is concluded.*

The hearing package also includes a separate Fact Sheet titled: *The Dispute Resolution Process*. This Fact Sheet contains specific information about preparing and serving evidence on pages 3 and 4. The instructions also list additional resources that the applicant may choose to access including *Dispute Resolution Rules of Procedure*, *Fact sheet RTB-127- Preparing for Dispute Resolution*, copies of toll-free numbers to speak to information officers at the Residential Tenancy Branch and the website address for RTB..

With respect to the landlord’s request for monetary compensation, this landlord is seeking to have the Ten Day Notice to End Tenancy enforced through a monetary order for rental arrears claimed on the Notice.

In order to grant a monetary claim based on this Notice, I find that it is critical that a copy of the Notice, upon which the landlord’s application and claim is based, be submitted.

Given the above, in the absence of key evidence that was to be submitted for the hearing and served on the respondent 5 days prior to the hearing in accordance with the Act and *Rules of Procedure*, I find that I am unable to grant the landlord's request for a monetary order for the rental arrears owed. I find that the landlord has not adequately proven the claim and I hereby dismiss the landlord's application without leave.

### **Background and Evidence Tenant's Application**

The tenancy began in September 2013 with rent set at \$450.00 per month. No security deposit was paid. The tenant vacated at the end of December 2013.

The tenant testified that they are owed \$600.00 for labour performed for the landlord and \$400.00 in compensation for being blocked from using areas of the rental unit and finally ending up homeless.

The tenant stated that the landlord engaged the tenant to paint a house that the landlord had to sell. The tenant testified that the landlord did not have the money to pay him. According to the tenant, the landlord wanted him to leave and there were several confrontations. The tenant testified that the landlord blocked off a portion of the home depriving the tenant of access. The tenant testified that he was not able to use the rental unit and ended up having to leave.

No copy of the written tenancy agreement was submitted into evidence. However, it is the landlord's position that the tenant was complying with the Act, including not paying rent.

### **Analysis – Tenant's Monetary Claim**

In regard to an Applicant's right to claim damages from another party, Section 7 of the Act states that, if a landlord or tenant fails to comply with the Act, the regulations or tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act grants a Dispute Resolution Officer authority to determine the amount and order payment under the circumstances.

It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

#### **Test For Damage and Loss Claims**

1. Proof that the damage or loss exists,

2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement,
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage,
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance, the burden of proof is on the tenant, to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the respondent.

With respect to the tenant's claim for compensation for labour performed, I find that my authority as arbitrator is limited under the Act to determining disputes with respect to tenancies and tenancy agreements. I find that I do not have authority to determine matters that pertain to other kinds of contractual agreements, such as employment or labour for payment.

Therefore, I find that the dispute matter between these parties relating to wages owed is beyond my jurisdiction as such contracts are not governed by the Residential Tenancy Act.

In regard to the tenant's claim for loss of the use of the rental unit, I find that the tenant did not prove that he paid rent for the period he was not able to utilize premises. I find that in order to meet element 3 of the test for damages, the claimant must prove that a monetary loss was incurred.

I find that the tenant has failed to meet his burden of proof, and the monetary claim for damages must be dismissed.

Given the above, I find that the matter of Possession is moot, the dispute over payment for work performed is not within my jurisdiction and the remainder of both the landlord's and the tenant's applications are found to have no merit and must be dismissed.

Based on the testimony and evidence I hereby dismiss the tenant's application without leave to reapply.

Based on the testimony and evidence I hereby dismiss the tenant's application without leave to reapply.

Each party is responsible for their own costs of the applications.

**Conclusion**

The landlord and the tenant are not successful in their cross applications seeking monetary compensation and both applications are dismissed without leave. The issue of the landlord's request for an Order of Possession, is moot as the tenant vacated the unit and the portion of the tenant's application seeking compensation for work performed is not governed by the Residential Tenancy Act.

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: February 26, 2014

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Residential Tenancy Branch

