



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPC, CNC, MNR, MNDC, OPT, LAT, RR, FF

### Introduction

There are applications filed by both parties. The Landlord has filed an application seeking an order of possession as a result of a notice to end tenancy issued cause, a monetary order for unpaid rent or utilities, for money owed or compensation for damage or loss and recovery of the filing fee. The Tenant has also filed an application seeking an order to cancel a notice to end tenancy issued for cause, to obtain an of possession for the rental unit or suite, an order authorizing the Tenant to change the locks to the rental unit and an order allowing the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided.

Both parties attended the hearing by conference call and gave testimony. As both parties have attended and have confirmed receipt of the notice of hearing package submitted by the other party, I am satisfied that both parties have been properly served. The Tenant confirmed receipt of the Landlord's documentary evidence. The Tenant did not submit any documentary evidence. The Tenant disputes this stating that documentary evidence was submitted with the application. The Landlord stated that he did not receive any. The Tenant's file does not indicate that any documentary evidence was submitted.

At the beginning of the hearing, the Tenant clarified that he was withdrawing his application for an order of possession and his request to change the locks, as he is currently occupying the rental unit and does not know why these selections were made on his application.

Issue(s) to be Decided

Is the Landlord entitled to an order of possession?  
Is the Tenant entitled to an order cancelling the notice to end tenancy?  
Is the Landlord entitled to a monetary order?  
Is the Tenant entitled to a monetary order?  
Is the Tenant entitled to an order to reduce rent?

Background and Evidence

This Tenancy began on September 1, 2013 on a month to month basis as shown by the submitted copy of the signed tenancy agreement signed on September 1, 2013. The monthly rent is \$450.00 payable on the 1<sup>st</sup> of each month.

Both parties confirmed that the Landlord served the Tenant with a 1 month notice to end tenancy issued for cause dated January 28, 2014. The notice states an effective end of tenancy date of February 23, 2014. The notice displays 4 reasons for cause.

Tenant or a person permitted on the property by the tenant has”

-Significantly interfered with or unreasonably disturbed another occupant or the landlord.

-seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

Tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

Residential Tenancy Act only: security or pet damage deposit was not paid within 30 days as required by the tenancy agreement.

The Landlord states that the Tenant has failed to pay the \$225.00 security deposit as agreed upon based upon the signed tenancy agreement. The Tenant states that he has not paid the security deposit, but that he has been living at the rental for over 6 months in which the Landlord has never made a request for it. The Tenant argues that the Landlord is only allowed to ask for it once as per the Act. The signed tenancy agreement notes that the \$225.00 security deposit would be paid as “will work for it, he said welfare said to.” The Tenant disputes this stating that this notation was added after by the Landlord without his knowledge.

During the hearing, the Landlord withdrew his 3<sup>rd</sup> reason for cause listed on the 1 month notice to end tenancy. (Residential Tenancy Act only: security or pet damage deposit was not paid within 30 days as required by the tenancy agreement.) As such, no further action is required for this portion of the notice.

The Landlord states that the Tenant goes in and out of the rental unit in the early morning hours disturbing him. The Tenant disputes this stating that this is not true.

The Landlord also states that the Tenant uses drugs in the rental. The Tenant disputes this stating that he does not use drugs. The Landlord has a witness, G.H. who states that she has witnessed the tenant using drugs. G.H. states that she can smell the drugs as it is like skunk smell. The Tenant states that the witness, G.H. is not reliable because she is the Tenant in the upstairs unit and wishes to move into the basement. The Tenant questioned the witness's ability to recognize drugs. The witness stated that it was a skunk smell and she has witnessed the characteristics of this in the past and is positive that it is illegal drugs.

The Landlord seeks a monetary order for \$550.00 which consists of \$450.00 for February rent not paid and \$100.00 for a personal loan given to the Tenant. The Tenant disputes the Landlord's claim of unpaid rent as it is directly paid for by welfare and that it was returned to welfare by the Landlord as he refused payment. The Tenant also states that the \$100 personal loan was repaid to the Landlord.

The Tenant also seeks a monetary order for \$1,000.00 which consist of a claim for the loss of cable and internet access, suffering a loss of quiet enjoyment because the Landlord had lots of quails making noises outside his door, states that the Landlord routinely enters his rental unit without permission, that there is a lock on the mail box for which he does not have access. The Landlord disputes these claims stating that cable and internet are not included in the tenancy as shown by the tenancy agreement.

### Analysis

On the issue reason for cause to end the tenancy of the Tenant or a person permitted on the property by the tenant has:

-Significantly interfered with or unreasonably disturbed another occupant or the landlord. -seriously jeopardized the health or safety or lawful right of another occupant or the landlord, I find based upon a balance of probabilities that I prefer the evidence of the Landlord and his witness over that of the Tenant. The Tenant was confident in her answer that she was able to recognize drugs in her presence. I find that the presence

of the drugs would interfere with or unreasonably disturb another occupant or the landlord. On this basis, I find that the Landlord's request for an order of possession based upon the notice dated January 28, 2014 has been established. The Landlord is granted an order of possession. The order must be served upon the Tenant. 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. The remaining reason for cause need not be dealt with as I am satisfied that the Landlord has cause based upon the first reason for cause selected. The second remaining reason for cause need not be addressed as such.

As such, the Tenant's request to cancel the notice to end tenancy is dismissed.

The tenancy is at an end the Tenant's request to reduce rent is dismissed.

I find that the Landlord's request for recovery of a person loan of \$100.00 does not fall within the jurisdiction of the Residential Tenancy Act as it was a personal issue and not related to the tenancy and as such, dismiss this portion of the monetary claim for lack of jurisdiction.

On the Landlord's claim of unpaid rent of \$450.00, I find that the Landlord has failed to provide sufficient evidence to show that rent was not paid as the rent was paid directly to the Landlord from welfare. The Landlord did not dispute the Tenant's claim that February rent was refused and returned to welfare. As such, this portion of the monetary claim is dismissed.

I find that the Tenant has failed to establish a claim for \$1,000.00 for the loss of internet and cable. As noted in the signed tenancy agreement, it is not provided as part of the tenancy. The Tenant is unable to provide sufficient evidence to support his claim over that of the documentary evidence provided by the Landlord. The Tenant's monetary claim is dismissed.

Conclusion

The Landlord is granted an order of possession.

The Tenant's monetary claim is dismissed.

The Landlord's monetary claim is 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: March 27, 2014

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Residential Tenancy Branch

