



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Offwest Holdings Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, MNDC, ERP, FF

### Introduction

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

1. An Order Cancelling a Notice to End Tenancy for Cause - Section 47;
2. A Monetary Order for compensation - Section 67;
3. An Order for the Landlord to make emergency repairs to the unit – Section 32; and
4. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlords were each given full opportunity to be heard, to present evidence and to make submissions under oath. At the onset of the Hearing the Tenant withdrew the claim for emergency repairs.

### 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?

### Background and Evidence

The tenancy of a basement unit started on May 1, 2010 for which there was a written tenancy agreement. On December 1, 2010 the parties entered into an oral agreement for the upper unit with rent of \$900.00 payable on the 1<sup>st</sup> day of each month and the Tenant moved to the upper unit. As of November 1, 2013 rent of \$930.00 became payable.

On March 25, 2014 the Landlord served the Tenant with a one month notice to end tenancy for cause with reasons, one of which sets out that the Tenant is repeatedly late paying rent. The Landlord states that the Tenant has been late paying rent for December 2013 and for January and February 2014. The Landlord states that the Tenant paid the rent in increments during these months. The Landlord states that he attends the unit every month on the first day of the month to obtain the rent but has to repeatedly return. The Landlord states that when attending on the first day of the month the Tenant would tell the Landlord to return later but would not have the full amount available. The Landlord states that May 2014 rent has been paid on time. The Landlord requests an order of possession effective May 31, 2014 should the Notice be found valid.

The Tenant states that the rents were paid late because the Landlord did not come on the first day of each month and because the Tenant was not getting compensated for the utilities owed from the lower tenant. The Tenant states that the utilities are in her name and that the lower tenant was to pay its portion to the Tenant. The Tenant was unable to detail with any precision how much those amounts were each month but indicates that the amounts were less than any of the installment amounts paid to the Landlord each month for rent. The Tenant states that the utilities owed were not paid by the lower tenant until the end of February 2014. The Tenant states that she is moving out of the unit anyway by June 1, 2014.

The Tenant states that at the end of September or the beginning of October 2014 the unit was without heat and the smell of gas was detected. The Tenant states that although the Landlord was informed immediately it took approximately 5 days for the heat to be turned back on. The Tenant states that she purchased heaters as she has a 2 year old and that she asked for a rent reduction but was denied. The Landlord states that the furnace simply required the turn of a switch to change the setting from summer to winter, that the Tenant was only without heat for approximately 2 days and that it was not cold outside yet.

The Tenant states that on March 18, 2014 the unit was again without heat and the smell of gas was still present. The Tenant states that the Landlord was called however the Landlord told the Tenant not to call anyone else. On the same day the Tenant called the safety authority that inspected the furnace, confirmed a gas leak, turned off the gas and called the Landlord to make repairs. The Tenant states that she was informed by the safety authority not to turn the gas back on until the authority could do a re-inspection. The Parties agree that the Landlord had a repair person attend the unit and that after the repairs the gas was turned on without the re-inspection by the authority. The Tenant states that the Landlord refused to turn off the gas. The Tenant states that when she turned the furnace on that night there was not heat and the pilot light was off so the Tenant called the utility company who confirmed a gas leak and evacuated the Tenant and her child for over two hours. The Tenant states that the Landlord had never serviced the furnace during the four years of the tenancy. The Tenant claims \$129.00 in compensation for the loss of heat and loss of use of the unit. The Tenant states that her child's health was affected in an unrelated matter.

The Landlord states that he was aware that the gas was not to be turned back on until the inspection by the safety authority but that the person who repaired the furnace was a qualified gas fitter and that the decision to turn on the gas was a decision made between the repair person and the safety officer. The Landlord states that the gas fitter had noticed matches by the furnace and believes the Tenant was tampering with the furnace. The Tenant states that the gas company used the matches to light the pilot.

### Analysis

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove, on a balance of probabilities, that the tenancy should end for the reason or reasons indicated on the Notice and that at least one reason must constitute sufficient cause for the Notice to be valid. Based on the undisputed evidence that the Tenant paid rent in installments for three recent months in a row and considering that the outstanding amounts were far greater than the amounts indicated as owed for utilities, I

find that the Landlord has substantiated repeated late rent payments as set out in the Notice. I therefore find that the Notice is valid and that the Tenant is not entitled to a cancellation of the Notice. As the Notice has been found valid on this reason it is not necessary to consider any of the other reasons for the Notice.

Section 55 of the Act provides that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,

- (a) the landlord makes an oral request for an order of possession, and
- (b) the director dismisses the tenant's application or upholds the landlord's notice.

Given the oral request for the order of possession and the finding that the Notice is valid, I find that the Landlord is entitled to an Order of Possession effective 1:00 p.m. on May 31, 2014.

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. 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. Based on the undisputed evidence that the furnace had not been serviced during the tenancy and that the heat was unavailable for a number of days, I find that the Tenant has established that the Landlord failed to provide a working furnace as obligated. Although the Landlord argues that it was not cold outside at the time, it is not up to the Landlord to determine how much heat the Tenant requires, the Landlord must provide a working and serviced furnace at all times. I also find that the Landlord acted negligently

in relation to the detection of a gas leak resulting in the Tenant and her small child being evacuated from the unit. As a result, I find that the Tenant is entitled to compensation of **\$129.00** as claimed. As this dispute did not include a claim in relation to a matter involving the child's health, I note that the Tenant remains at liberty to make an application for compensation in relation to this matter.

As the Tenant has been successful with her compensation claim I find that the Tenant is also entitled to recovery of the **\$50.00** filing fee for a total entitlement of **\$179.00**.

#### Conclusion

**I grant** the Landlord an Order of Possession effective 1:00 pm on May 31, 2014.

**I grant** the Tenant an order under Section 67 of the Act for **\$179.00**. 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: May 16, 2014

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Residential Tenancy Branch

