



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, CNR, MNDC, FF, OPR, OPC, MNR, MNDC, MNSD

### Introduction

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

The Tenant applied for:

1. An Order cancelling two notices to end tenancy – Sections 46 and 47;
2. A Monetary Order for compensation - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord applied for:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent and utilities - Section 67;
3. A Monetary Order for compensation – Section 67;
4. An Order to retain the security deposit – Section 38; and
5. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the notice to end tenancy for unpaid rent valid?

Is the Tenant entitled to a cancellation of the notice to end tenancy for unpaid rent?

Is the Tenant entitled to the monetary amount claimed?

Is the Tenant entitled to recovery of the filing fee?

Is the Landlord entitled to an order of possession?

Is the Landlord entitled to the monetary amounts claimed?

Is the Landlord entitled to recovery of the filing fee?

### Background and Evidence

The tenancy started on April 1, 2014. Rent of \$1,700.00 is payable monthly on the first day of each month. At the outset of the tenancy the Landlord collected \$800.00 as a security deposit. On May 3, 2014 the Landlord served the Tenant with a 10 day notice to end tenancy for unpaid rent (the "Notice").

The Tenant agrees that May and June 2014 rent has been unpaid as the Parties had entered into negotiations to end the tenancy and that this agreement fell through leaving the Tenant with an inability to keep his roommates or to obtain new roommates to help pay the rent.

The Landlord states that the Tenant agreed to cover the unpaid utilities that accrued prior to the onset of the tenancy when the Tenant took over the tenancy from the previous tenant. The Tenant had been a roommate of the previous tenant. The Landlord provides a copy of an agreement dated April 1, 2014 signed by the Tenant as proof of that agreement. The Landlord states that the Tenant also failed to pay the utilities for May and June 2014 and that a copy of the bills for May and a demand letter were provided to the Tenant. The Tenant disputes any agreement to pay for utilities prior to the start of the tenancy.

The Tenant states that the Landlord had entered into an agreement to end the tenancy and provide monies to the Tenants but that the Landlord reneged on this agreement. The Tenant claims compensation for breach of trust, breach of contract and extortion. The Tenant agrees that no mutual agreement to end the tenancy was ever signed by the Parties. The Landlord agrees that although an attempt was made to end the tenancy mutually, the discussions broke down and nothing was signed.

Analysis

Section 46 of the Act requires that upon receipt of a 10 notice to end tenancy for unpaid rent (the "Notice") the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. Although the Tenant has disputed the Notice, given the Tenant's evidence that the rent for May and June 2014 are unpaid, I find that the Notice is valid and that the Tenant is not entitled to a cancellation of the Notice. The Landlord is therefore entitled to an **order of possession** and unpaid rent of **\$3,400.00**.

Noting that the signed agreement dated April 1, 2014, indicating that the Tenant is responsible for the payment of utilities from April 1, 2014 forward, does not mention anything about the payment of utilities prior to the start of the tenancy, and considering the bills provided for April 2014 are for charges prior to April 1, 2014, I find that the Landlord has substantiated only the following amounts:

**\$87.00** for the period March 27 to April 29, 2014 from Fortis; and

**\$55.31** for the period April 1 to April 30 from Hydro.

The Landlord has leave to reapply for unpaid utilities to the end of the tenancy.

As the Landlord's application has met with substantial success, I find that the Landlord is also entitled to recovery of the **\$50.00** filing fee for a total entitlement of **\$3,492.31**. Deducting the security deposit of \$800.00 plus zero interest leaves **\$2,792.31** owed by the Tenant to the Landlord.

Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. There is no provision under the Act that requires a party to enter into a mutual agreement to end a tenancy. Where parties do enter into such negotiations and those negotiations fail, it is not the fault of either party. As the only thing the Tenant claims compensation for is the failure of the Landlord to live up to an

unsigned agreement and given that I accept that the agreement to end was not signed because one or the other Party did not agree, I find that the Tenant has not substantiated that the Landlord has breached any obligation to the Tenant. I therefore dismiss the Tenant's claim for compensation. As the Tenant's application has been completely unsuccessful, I decline to award recovery of the filing fee.

### Conclusion

The Tenant's application is dismissed.

**I grant** an Order of Possession to the Landlord. The Tenant must be served with this **Order of Possession**. 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.

**I order** that the Landlord retain the **deposit** and interest of \$800.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **\$2,792.31**. 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: June 16, 2014

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Residential Tenancy Branch

