



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 396323 BC Ltd  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, OPC, MND, MNR, MNDC, MNSD, RP, RR, FF

### 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. A Monetary Order for compensation or loss - Section 67;
2. An Order for repairs to the unit – Section 32; and
3. An Order allowing the Tenant to reduce rent for services/facilities agreed upon but not provided – Section 65.

The Landlord applied for:

1. An Order of Possession - Section 55;
2. A Monetary Order for damage to the unit – Section 67;
3. A Monetary Order for unpaid rent or utilities - Section 67;
4. A Monetary Order for compensation – Section 67;
5. An Order to retain the security deposit – Section 38; and
6. 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 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?

Is the Tenant entitled to the monetary amounts claimed?

Is the Tenant entitled to repairs?

Is the Tenant entitled to a rent reduction?

### Background and Evidence

The tenancy started on May 1, 2010. Rent of \$1,500.00 is payable monthly on the first day of each month. At the outset of the tenancy the Landlord collected \$750.00 as a security deposit. The Parties agree that the Tenant owes \$867.00 for April 2014 and has not paid rent for May or June 2014. No move-in inspection was conducted.

On April 24, 2014 the Landlord served the Tenants with a one month notice to end tenancy for cause (the "Notice"). The Notice has an effective date of May 31, 2014. The Tenant did not dispute the Notice and states that they will move out of the unit on June 30, 2014. The Landlord agrees to this date and requests an order of possession effective June 30, 2014. The Landlord also claims \$3,981.00 in unpaid rent.

The Parties agree that the tenancy included a useable fireplace. The Tenant states that within two months of the tenancy they stopped using the fireplace as the chimney was full of soot and needed to be cleaned for safe use. The Tenant states that they first asked the Landlord in the spring of 2011 to clean the fireplace and thereafter each year but the Landlord did not clean the fireplace. The Tenant claims \$50.00 per month for 24 months that the fireplace was not useable.

The Landlord states that the Tenants did not ask to have the chimney cleaned until August or September 2013 and that the Tenants were told that since it was the rainy season they would have to wait. The Landlord also states that the Tenants did not feel comfortable with persons coming into the unit so the Landlord gave them the information to arrange the cleaning with the Landlord paying for the repairs. The Landlord states that the Tenants were given this information two years ago. The Landlord states that the fireplace was cleaned before the start of the tenancy. The

Tenant denies that the Landlord gave them any information to arrange the cleaning time and states that no contacts were ever provided to the Tenants. The Tenant states that since she is disabled she is always at home.

The Tenant states that the wooden fence was in bad condition and falling apart at the onset of the tenancy and a month after the tenancy started the Tenants asked the Landlord to repair the holes and broken slats. The Tenant states that the Landlord came and patched the fence but the patches did not work. The Tenant provided photos of the fence. The Tenant states that they asked the Landlord again to make repairs but the Landlord did nothing. The Tenant states that they have attempted to patch the fence themselves over the tenancy but that their dogs keep getting out through the broken areas and enter the neighbour's yards. The Tenant states that the neighbours have complained to both the Tenant and the Landlord and have offered to share the costs to make repairs. The Tenant provided a letter from the neighbour. The Tenant states that as a result of the broken fence she must remain outside while her two dogs are in the yard and has recently had to also keep them on leashes. The Tenant claims compensation for loss of use of yard in the amount of \$100.00 per month for 48 months.

The Landlord states that the Tenant did not ask for repairs until June 19, 2013 and that the Landlord returned three times to patch the fence. The Landlord states that the cost of the fence is shared with her neighbours and so she cannot just replace the fence. The Landlord states that one of the dogs no longer lives at the unit and only comes over for visits.

The Tenant states that within two months of moving in to the unit the washing machine started to stretch their clothes and that although they asked the Landlord to repair the machine the Landlord did nothing and told them they were not using the machine properly. The Tenant states that this machine finally stopped working 8 months ago and the Landlord replaced it with a new washing machine. The Tenant states that this top loading machine did not fill with water and that although the Landlord was told about

the problem the Landlord did not send anyone to inspect or repair the machine. The Tenant claims \$50.00 per month for 42 months.

The Landlord states that she did not have to call a repair person for the old machine because she knew the problem was with the loading of the machine and that the Landlord showed them how to load the machine. The Landlord states that when the old machine stopped working she knew it was time to replace it as it was old. The Landlord states that the Tenants never told the Landlord about any problems with the new machine.

The Tenants state that the dryer stopped working at the end of March 2014 and that the Landlord has refused to replace or repair the machine. The Landlord states that she does not have to repair or replace the machine because the Tenants did not pay their rent. The Landlord states that the dryer has only been broken for one month.

### Analysis

Section 55 of the Act provides that a landlord may request an order of possession of a rental unit by making an application for dispute resolution where a notice to end the tenancy has been given by the landlord, the tenant has not disputed the Notice by making an application for dispute resolution and the time for making that application has expired. As the Tenant did not dispute the Notice and given the Landlord's agreement to the Tenants moving out of the unit on June 30, 2014, I find that the tenancy will end on June 30, 2014 and that the Landlord is entitled to an order of possession effective 1:00 p.m. on June 30, 2014. As the tenancy is ending I dismiss the Tenant's claim for a rent reduction and repairs. As the Tenant still has time to ensure that the unit is left reasonably clean and undamaged except for reasonable wear and tear, I dismiss the Landlord's claim for damages to the unit and compensation with leave to reapply.

Section 26 of the Act provides that a tenant must pay the rent when and as provided under the tenancy agreement. Based on the undisputed evidence of unpaid rent, I find that the Landlord has substantiated an entitlement to **\$3,981.00**. As the Landlord has

been substantially successful with its application I find that the Landlord is also entitled to recovery of the **\$50.00** filing fee for a total entitlement of **\$4,031.00**

Given the undisputed evidence that a useable fireplace was provided with the unit and considering the undisputed evidence that the fireplace was not cleaned by the Landlord during the tenancy I find that the Tenants are entitled to compensation for this loss. Based on the Landlord's evidence that the Tenants were given information to arrange for chimney cleaning two years ago, I find that the Tenant has substantiated that the Landlord was aware of the problem with the fireplace by 2012 and failed to carry out its obligations to clean the fireplace and ensure it was safe to use. I therefore find that the Tenant has substantiated a reasonable entitlement of \$50.00 per month for the past 18 months in the total amount of **\$900.00** representing a reduction in the value of the unit.

Given that the tenancy commenced with a damaged fence and that the Tenant did not seek repairs prior to signing the agreement, I find that the Tenant has not substantiated any loss from the onset of the tenancy. I also accept the Landlord's evidence of repairs although I note by the photos that the repairs do not appear to have been effective. Given the witness evidence from the neighbours I accept that the Tenant was restricted to the yard while her pet was outside due to the state of the fence and for this I find that the Tenant has only substantiated a nominal entitlement of **\$100.00**.

Considering the evidence of both Parties in relation to the washing machine and given the Landlord's evidence that no repair person was brought to check the old machine for problems and that the machine soon thereafter required replacement due to its age, I find that the Landlord failed to ensure a workable washing machine early into the tenancy. Although the Landlord's evidence is that she had no knowledge of the problems with the new machine, I find this evidence to be doubtful and accept that the Landlord failed to make inspections of the machine and repairs as might have been necessary. Given these findings, I find that the Tenant has substantiated some loss however given that no evidence was provided that the Tenants incurred any costs to launder their clothes during the tenancy or any evidence of costs to replace clothes that

were damages I find that the Tenant is only entitled to a nominal monetary award of **\$800.00** for the inconvenience of the loss over the duration of the tenancy based on \$200.00 per year of tenancy. Given the undisputed evidence that the dryer was reported not to work and the Landlord's refusal to repair the dryer but considering that the Tenants provided no evidence of costs, I find that the Tenants are entitled to nominal compensation for the inconvenience of the loss in the amount of **\$50.00** for a total entitlement of **\$1,850.00**. Deducting the Tenant's entitlement and the security deposit of \$750.00 plus zero interest from the Landlord's entitlement leaves **\$1,431.00** owed by the Tenants to the Landlord.

#### Conclusion

**I grant** an Order of Possession **effective 1:00 p.m. on June 30, 2014** to the Landlord.

I **order** the Landlord to retain the security deposit and interest of \$750.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for **\$1,431.00**. 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: June 12, 2014

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Residential Tenancy Branch