



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: OP, MNR, MND, MNDC, MNSD, FF  
MNSD, RR, FF

### Introduction

This hearing was scheduled in response to 2 applications: i) by the landlord for an order of possession / a monetary order as compensation for unpaid rent / compensation for damage to the unit, site or property / compensation for damage or loss under the Act, Regulation or tenancy agreement / retention of the security deposit / and recovery of the filing fee; and ii) by the tenant for compensation reflecting the alleged overpayment of security deposit / permission to reduce rent for repairs, services or facilities agreed upon but not provided / and recovery of the filing fee.

Both parties attended and gave affirmed testimony.

A third party, "AAF" attended the hearing as an observer, and neither party objected to his presence. In his letter to the tenants by date of June 20, 2014, "AAF" stated in part:

HEREBY TAKE NOTICE as follows:

1. that due to a default in the mortgage referred to in the Assignment, ["WC"] CORPORATION hereby exercises its right to collect the rents; and
2. that effective forthwith all future rental payments shall be made payable to ["WC"] CORPORATION and delivered to them c/o ["AAF's" law firm].

### Issue(s) to be Decided

Whether either the landlord or the tenant is entitled to any of what has been applied for, under the Act, Regulation or tenancy agreement.

### Background and Evidence

Pursuant to a written tenancy agreement the fixed term of tenancy is from June 01, 2013 to May 31, 2014. Pursuant to the agreement, at its expiration the tenant "must vacate the property, unless a new [tenancy agreement] has been negotiated and hence

forth taken effect.” Monthly rent of \$1,600.00 is due and payable in advance on the first day of each month, and a security deposit of \$1,600.00 was collected.

In the circumstances of this tenancy, even while a new tenancy agreement was not ultimately negotiated and entered into by the parties, the tenant continues to reside on the property. In the result, the landlord filed an application for dispute resolution on June 12, 2014 in which he seeks an order of possession and certain compensation.

In the tenant’s application for dispute resolution filed on May 15, 2014, he seeks reimbursement of the alleged overpayment of security deposit in the amount of \$800.00 ( $\$1,600.00 \div 2$ ), compensation related to miscellaneous alleged deficiencies at the property, none of which are quantified in the application, and recovery of the filing fee.

### Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, forms and more can be accessed via the website: [www.rto.gov.bc.ca](http://www.rto.gov.bc.ca)

Based on the documentary evidence and testimony, the various aspects of the respective applications and my related findings are set out below.

## **LANDLORD**

### ***Order of possession***

Section 44 of the Act addresses **How a tenancy ends**, in part:

44(1) A tenancy ends only if one or more of the following applies:

(b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;

Section 55 of the Act speaks to **Order of possession for the landlord**, in part:

55(2) A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:

(c) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit at the end of the fixed term;

In view of the requirement set out in the written tenancy agreement that the tenant must vacate the property at the end of the fixed term unless a new tenancy agreement has been entered into, and in consideration of the above statutory provisions, I find that the landlord has established entitlement to an **order of possession**. The order of possession is to be effective **two (2) days** after service on the tenant.

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\$2,126.66: *unpaid rent and fees / penalties*

The above amount appears variously to be comprised of the balance of allegedly unpaid rent prior to May 31, 2014, a *per diem* calculation of unpaid rent for June as of June 10, 2014, and certain fees / penalties.

First, I note that the tenancy agreement provides for the assessment of a \$100.00 fee in the event of late payment of rent. In this regard, the attention of the parties is drawn to section 7 of the Regulation which speaks to **Non-refundable fees charged by landlord**, in part:

7(1) A landlord may charge any of the following non-refundable fees:

(d) subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent.

While the tenant claims that rent has been paid in full to May 31, 2014, there is no dispute that no rent whatsoever has been paid for either June or July 2014. In the absence of sufficiently clear documentary evidence / records, and in view of the statutory provisions set out immediately above, the aspect of the landlord's application concerning compensation of \$2,126.66 is hereby dismissed, with the exception of unpaid rent for June and July 2014 which is addressed below.

Section 23 of the Act addresses **Rules about payment and non-payment of rent**, in part:

26(1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Further, Residential Tenancy Policy Guideline # 3 speaks to "Claims for Rent and Damages for Loss of Rent," in part:

Section 44 of the Residential Tenancy Act and section 37 of the Manufactured Home Park Tenancy Act set out when a tenancy agreement will end. A tenant is not liable to pay rent after a tenancy agreement has ended pursuant to these provisions, however if a tenant remains in possession of the premises

(overholds), the tenant will be liable to pay occupation rent on a *per diem* basis until the landlord recovers possession of the premises. In certain circumstances, a tenant may be liable to compensate a landlord for loss of rent.

In the absence of any dispute that rent has not been paid for either June or July 2014, I find that the landlord has established entitlement to unpaid rent in the total amount of **\$2,787.03**, which is calculated as follows:

\$1,600.00: unpaid rent for June 2014  
\$1,187.03: unpaid rent for the period July 01- 23, 2014  
           $[(\$1,600.00 \div 31) \times 23]$

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\$150.00: *cost of labour for replacing heating elements*  
\$56.00: *two heating elements*  
\$220.55: *further work on hot water system*  
\$134.40: *checking out the well system*

Section 32 of the Act speaks to **Landlord and tenant obligations to repair and maintain**, in part:

32(1) A landlord must provide and maintain residential property in a state of decoration and repair that

- (a) complies with the health, safety and housing standards required by law, and
- (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

(2) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

I find there is insufficient evidence that costs claimed by the landlord are the result of actions or neglect of the tenant or a person permitted on the residential property by the tenant. Accordingly, this aspect of the landlord's application is hereby dismissed.

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\$5,691.89: *legal fees*

Section 72 of the Act addresses **Director's orders: fees and monetary orders**. With the exception of the filing fee for an application for dispute resolution, the Act does not provide for the award of costs associated with litigation to either party to a dispute. Accordingly, this aspect of the application is hereby dismissed.

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\$400.00: *compensation for “taking another day to prepare and file”*

For reasons identical to those set out immediately above, this aspect of the application is hereby dismissed.

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\$75.00: *application fee*

The filing fee paid by the landlord for his application is \$100.00, and my findings related to his application to recover that amount are set out below.

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\$100.00: *filing fee*

As the landlord has achieved limited success with his application, I find that he has established entitlement to recovery of ½ the \$100.00 filing fee in the amount of **\$50.00**.

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**Sub-total Entitlement: \$2,837.03** (\$2,787.03 + \$50.00)

Section 72 of the Act speaks to **Director’s orders: fees and monetary orders**, and provides in part:

72(2) If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted

(c) in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant.

I order that the landlord retain **\$800.00** of the \$1,600.00 security deposit collected, leaving a **Net Balance Entitlement** of **\$2,037.03** (\$2,837.03 - \$800.00).

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## **TENANT**

**\$800.00:** *overpayment of security deposit*

Section 19 of the Act speaks to **Limits on amounts of deposits**:

19(1) A landlord must not require or accept either a security deposit or pet damage deposit that is greater than the equivalent of ½ of one month’s rent payable under the tenancy agreement.

(2) If a landlord accepts a security deposit or a pet damage deposit that is greater than the amount permitted under subsection (1), the tenant may deduct the overpayment from rent or otherwise recover the overpayment.

Following from the above, as the monthly rent is \$1,600.00, I find that the maximum amount of security deposit that may lawfully be collected is \$800.00. However, as the

landlord collected a security deposit of \$1,600.00, I find that the tenant has established entitlement to reimbursement of the \$800.00 overpayment claimed.

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*Other miscellaneous costs which are not quantified*

In the absence of sufficient documentary evidence in support of any particular amount of further compensation, this aspect of the application is hereby dismissed.

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**\$50.00:** *filing fee*

As the tenant has achieved a significant measure of success with his overall application, I find that he has established entitlement to recovery of the full filing fee.

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**Total entitlement: \$850.00**

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Offsetting the respective entitlements to compensation, I find that the landlord has established a net entitlement in the total amount of **\$1,187.03** (\$2,037.03 - \$850.00).

#### Conclusion

I hereby issue an **order of possession** in favour of the landlord effective **two (2) days** after service on the tenant. This order must be served on 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.

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$1,187.03**. Should it be necessary, this order may be served on the tenant, 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: July 15, 2014

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Residential Tenancy Branch

