



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION AND RECORD OF SETTLEMENT**

### **Dispute Codes:**

OPR, MNR, MNDC, ERP, RR, FF

### **Introduction**

This hearing was convened in response to cross - applications by the parties pursuant to the *Residential Tenancy Act* (the Act).

The tenant sought Orders as follows:

1. To cancel a Notice to End Tenancy for Unpaid Rent – Section 46
2. For the landlord to make emergency repairs – Section 33
3. To allow the tenant to reduce rent for repair, services or facilities agreed upon but not provided – Section 65
4. An Order to recover the filing fee for this application - Section 72.

The landlord sought Orders as follows:

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

Both parties participated in the hearing with their submissions, document evidence and testimony during the hearing. The parties acknowledged exchanging evidence, other than the tenant's evidence consisting of 2 receipts – which were not sent to the landlord.

### **Issue(s) to be Decided**

Is the notice to end tenancy for unpaid rent valid?

Is the landlord entitled to an Order of Possession?

Should the landlord's Notice to End for unpaid rent be cancelled?

Is the landlord entitled to the monetary amounts claimed?

Should the landlord be Ordered to make emergency repairs for health/safety reasons?

Should the tenant be allowed to reduce rent?

## **Background and Evidence**

The tenancy began on November 01, 2012. Rent in the amount of \$1500.00 is payable in advance on the first day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$750.00. The tenant failed to pay all owed rent in the month of July 2014 and on July 14, 2014 the landlord served the tenant with a notice to end tenancy for non-payment of rent. The tenant further failed to pay any rent in the month of August and September 2014. The landlord's application sought to end the tenancy and obtain an order for the outstanding arrears, a fee for insufficient funds and 3 late fees as per the tenancy agreement.

The tenant sought to cancel the Notice to End the tenancy on the claim that a portion of the basement contains mould in various areas including inside the walls and that they notified the landlord of the problem and are owed compensation. The landlord denied being informed of the presence of mould and denied it exists. The tenant provided photographs of the claimed mould under the bathroom sink, on top of the sink and on the floor, as well as areas of the basement laundry room and bathroom claimed to be affected by mould. The tenant also testified that their spouse is an asbestos removal contractor and applied his knowledge to contain the claimed mould. The landlord disputed the tenant's claims of mould or that the tenant's photographs depict the presence of mould – rather, the landlord testified that the photographs depict soiling. However, the parties did agree that the photographs appeared to depict the agreed condition of the rental unit at the outset of the tenancy. The parties argued about the degree of verbal communication with each other respecting the state of the rental unit and the matters in dispute and acknowledged that there has not been written communication about the problems advanced by the tenant upon which the tenant can rely to support their version of events respecting communications or agreement.

The landlord submitted photographs depicting an array of refuse on the residential property which they want removed, and the tenant testified that the refuse is slowly being removed.

## **Analysis**

On preponderance of the evidence and on balance of probabilities, I find that the tenant has not provided sufficient evidence to support their claim that the rental unit contains a mould problem. I find their evidence may purport the presence of mould but it is insufficient to prove the mould exists; and, as a result I must dismiss the tenant's request the landlord be ordered to make certain repairs. None the less, if they can provide sufficient evidence of the problem it is available to them to verifiably communicate the evidence with the landlord and if necessary it is available to them to file for dispute resolution. As a result, this portion of the tenant's claim is **dismissed**, *with leave to reapply*.

As the tenant did not forward receipts for repairs to the landlord I find it would not be fair for an Arbitrator to authorize the tenant to reduce the rent in the same amount.

However, during the course of the hearing, the parties discussed their dispute and turned minds to compromise. The parties reached agreement on the state of the tenancy, the unpaid rent and reduction of rent for repairs paid by the tenant, on the following conditions, and at their request that I record the parties' settlement as follows.

1. The tenant and landlord agree that the tenancy may continue on the following terms.
2. The parties agree that the tenant will satisfy all arrears of rent, an insufficient funds fee, and 3 late payments of rent fees *according to the tenancy agreement*, in the sum of **\$3850.00** (*financial obligation to the landlord*) on or before **September 30, 2014**, by certified payment instrument.
3. The parties agree that the tenant will remove **all refuse/garbage** from the residential property, as depicted in the landlord's photographs into evidence, as soon as possible.
4. The tenant and landlord agree that upon the tenant providing the landlord **2 receipts in amounts of \$338.10 and \$280.00** for certain repairs for this tenancy **the landlord will reimburse the tenant for these costs**. Alternatively, if the tenant provides these 2 receipts by September 30, 2014 they may reduce the above agreed *financial obligation to the landlord* by the amount of each receipt.

So as to perfect the settlement agreement of the parties, I grant the landlord a Monetary Order in the agreed amount \$3850.00 and an Order of Possession. If the parties act on their agreement and the tenant pays the landlord the agreed amount, or the receipts and the equally reduced amount, **both Orders are immediately rendered null and of no effect**.

I decline to award either party their filing fee.

### **Conclusion**

The tenant's application respecting emergency repairs is **dismissed**, *with leave to reapply*.

The tenant's application for authority to reduce rent is **dismissed**.

**I grant** an Order of Possession to the landlord effective 2 days from the day it is served. **If** the landlord has cause under the *settlement agreement* to end the tenancy 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 grant** the landlord a Monetary Order under Section 67 of the amount of **\$3850.00**. **If** the landlord has cause under the *settlement agreement* to serve the tenant the

Monetary Order, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

**This Decision is final and binding on both parties.**

*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: September 22, 2014

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Residential Tenancy Branch

