



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, MNDC, FF

### Introduction

This matter dealt with an application by the Tenant to cancel a Notice to End Tenancy for unpaid rent, for compensation for loss or damage under the Act, regulations or tenancy agreement and to recover the filing fee.

The Tenant said he served the Landlords with the Application and Notice of Hearing (the “hearing package”) by personal delivery on November 21, 2014. Based on the evidence of the Tenant, I find that the Landlords were served with the Tenant’s hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

### Issues(s) to be Decided

1. Is the Tenant entitled to an order to cancel the Notice to End Tenancy?
2. Is there loss or damage to the Tenant and if so how much?
3. Is the Tenant entitled to compensation for the loss or damage and if so how much?

### Background and Evidence

This tenancy started on June 1, 2008 as a month to month tenancy. Rent is \$625.00 per month payable in advance of the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$325.00 on May 22, 2008.

The Landlord said she served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities dated November 9, 2014. She served the Notice on November 9, 2014 by posting it on the door of the Tenant’s rental unit. The Effective Vacancy date on the Notice is November 19, 2014. The Tenant is living in the unit and the Landlord requested an Order of Possession if the Tenant’s application is unsuccessful.

The Landlord continued to say that the Tenant has unpaid rent of \$625.00 for each month of November and December, 2014.

The Tenant agreed that he has not paid the rent for November and December, 2014 because he is not living in the unit but his belongings are still in the unit. The Tenant said he left the unit after renovations were done to the unit on the advice of a restoration company representative. The Tenant said there was dust in the unit that contained asbestos and he was told that he should not live there as asbestos is a health issue. The Tenant continued to say he does not want to live in the unit anymore and he wants the Landlord to pay for cleaning his belongings. The Tenant said his application is for \$2,000.00, but he really wants \$400.00 from the Landlord and then he will move out. The Tenant said he has not moved out because of this dispute and he thought everything should stay as it is until the Hearing was completed.

Further the Tenant said his unit had a thick coating of drywall dust over everything when the work was completed neither the worker nor the Landlord did a proper clean-up. Following the completion of the work the Tenant requested an environmental report as one had not been done prior to the work. The Tenant said the report said there was asbestos in the dust. When the Tenant reviewed the report he decided to move out of the unit for safety reasons. The Tenant said he is now requesting \$400.00 for compensation to clean his belongings. The Tenant said he did not submit a copy of the environment report and the \$400.00 is an estimate of the cost to clean his belongings. The Tenant said at this point his belongings have not been cleaned or moved out of the rental unit.

The Landlord said they have tried to work with the Tenant and they offered a cleaning service to clean the unit and the Landlord offered the Tenant \$80.00 for him to do the cleaning himself. The Landlord said he made this offer in the second week of October, 2014. The Landlord said the Tenant declined both offers. As well the Landlord said they offered the Tenant \$200.00 for his inconvenience and for cleaning his belongings if he would pay the November, 2014 rent of \$625.00, apply his security deposit to the December, 2014 rent and for the Tenant to move out by December 21, 2014. The Landlord said the Tenant declined this offer as well. The Tenant agreed he declined both offers as he believes the asbestos issue is more complex than the Landlord believes it to be. The Landlord said the report said safe levels of asbestos were below .1 units and the report showed levels of .02 units in the rental unit. The Tenant said those levels are for the work place not residential space. Neither party submitted a copy of the environmental report so I have concerns about the testimony about the report as it is only exerts and may not be accurate.

The Landlord called a Witness A.E. The Witness said he did the work and put tarps up in the rental unit to control dust, but some dry wall dust will be left and there is always post construction clean up. The Landlord asked the Witness if the Tenant was satisfied with the job. The Witness said the Tenant did not say anything about the dust but did mention repairs to a mirror and some drawers. The Tenant asked the witness if he cleaned up and if his vacuum worked because dust was left in the unit. The Witness

said his vacuum works and he did clean up but there is always some post construction cleaning on every job. The Witness said the post construction cleaning generally takes a few hours and would normally cost \$40.00 to \$80.00.

The Landlord said in closing they want to end this tenancy and get the rent paid. They have tried to work with the Tenant and he has declined both their offers to resolve this dispute. As well the Landlord said the Tenant has not cleaned the unit since the renovation work was done so some of the dust may be normal accumulation of dust.

The Tenant said in closing that the asbestos issue is a serious issue and the Landlord was negligent at the start and end of the renovation work because the Landlord did not take precautions about the asbestos. The Tenant continued to say he declined the Landlord's offer to have the unit cleaned because he wanted to do it himself and the \$80.00 the Landlord offered was not enough.

### Analysis

**Section 26(1)** says 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.

The Tenant does not have the right to withhold all or a portion of the rent from the Landlord when it is due therefore; I find the Tenant has not established grounds to be granted an order to cancel the Notice to End Tenancy. The Landlord's 10 Day Notice to End Tenancy dated November 9, 2014 stands in effect and consequently, I find pursuant to s. 55(2)(b) of the Act that the Landlord is entitled to an Order of Possession to take effect two days after the Notice is served to the Tenant.

With respect to the Tenants adjusted claim of \$400.00 for cleaning costs. I accept the testimony that the Landlord offered the Tenant a cleaning service for the rental unit or \$80.00 to clean his belongings himself and the Tenant declined both offers. I find the Landlord did act responsibly in regard to the cleanup and therefore I find the Tenant has not established grounds for a monetary claim for cleaning his belongings. The Tenant application is dismissed without leave to reapply.

Further the question of if there are any effects or if there are not any effects of the asbestos on the Tenant is not part of this hearing and the parties will have to find alternative method to resolve these disputes if any. It should be noted the Tenant did not indicate any problems resulting from the asbestos and he did not submit any evidence related to the asbestos testimony.

As the Tenant has been unsuccessful in this matter I order the Tenant to bear the cost of the filing fee of \$50.00 that he has already paid.

Conclusion

The Tenant's application is dismissed without leave to reapply.

An Order of Possession effective two days after service of the Notice on the Tenant has been issued to the Landlords. A copy of the Order must be served on the Tenant in accordance with the Act: the Order of Possession and may be enforced in the Supreme Court of British Columbia.

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: December 16, 2014

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Residential Tenancy Branch

