



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, MNR, MNDC, ERP, OPT, AAT, LAT, AS, RR,  
OPR, MND, MNR, MNDS, FF

### Introduction

Both parties as well as witnesses and a tenant advocate attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions with respect to all parts of their perspective applications.

This hearing dealt with applications from both the landlord and the tenant under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- an Order of Possession pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent ("the 10 Day Notice") pursuant to section 46;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to change the locks to the rental unit pursuant to section 70;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit and a monetary order for repairs to the rental unit pursuant to section 33;
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an Order of Possession of the rental unit pursuant to section 54;

- an order to allow access to or from the rental unit or site for the tenant or the tenant's guests pursuant to section 70; and
- an order allowing the tenant to assign or sublet because the landlord's permission has been unreasonably withheld pursuant to section 65.

The landlord testified that the 10 Day Notice was served by posting it on the tenant's door on November 20, 2014. She provided a copy of the 10 Day Notice and a proof of service document. The tenant confirmed receipt of the notice. Based on this evidence and pursuant to section 88 and 90 of the *Act*, the tenant was deemed served with the 10 Day Notice as of November 23, 2014, three days after its posting. The corrected effective date of this notice is December 3, 2014.

The tenant's witness (father) testified that he served the dispute resolution package and Notice of Hearing to the landlord in person on December 2, 2014. The landlord confirmed receipt of this package. Based on this testimony and pursuant to section 89 of the *Act*, I find the landlord duly served with the dispute resolution package and Notice of Hearing.

With respect to the applications for Orders of Possession with respect to the rental unit, I find this tenancy ended on December 3, 2014. Therefore, I find there is no need to consider the issues that would only apply to an ongoing tenancy.

#### Issues to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession for unpaid rent?

Is the landlord entitled to a monetary award for unpaid rent?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Is either the tenant or landlord entitled to authorization to recover the filing fee for this application?

Should any other orders be issued with respect to this tenancy?

#### Background and Evidence

I provide the following background and evidence in consideration of the landlord's monetary claim for unpaid rent and application to retain the tenant's security deposit. The landlord and tenant agreed that this tenancy began on September 3, 2014. The landlord continues to hold a security deposit in the amount of \$500.00 paid by the tenant on September 1, 2014.

The landlord testifies that the rental amount for this unit was \$1000.00 payable on the first of each month. She testified that the tenant has not paid any rent during her tenancy. The landlord provided a copy, described as a “replacement”, of the written tenancy agreement. The landlord indicates that a similar agreement was signed with the tenant. The landlord indicates that the tenant was provided with the agreement to review, sign and return at the tenant’s request. The landlord testified the tenant did not return the tenancy agreement.

The landlord has applied for a monetary award in the amount of \$3000.00 in unpaid rent for September, October and November 2014. The landlord did not seek to amend her claim to include December 2014 as she seeks an immediate Order of Possession. However, she seeks \$300.00 in late fees for September, October and November 2014. The landlord testified that the tenant has not paid rent for September, October or November 2014. The landlord testified that there has been no meaningful attempt to pay rent by the tenant since she moved into the rental unit.

The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent. The landlord testified that the tenant did not pay the September, October or November rent after receiving the 10 Day Notice on November 23, 2014. Nine days after the expiration of that 10 Day period, the landlord applied for an Order of Possession and a monetary award.

The landlord did not make any claim for damages at this hearing. The landlord testified, however, that there is significant damage to the rental unit as a result of the tenant’s treatment of the rental unit.

The tenant testified that she believed she was only to pay \$500.00 each month. She testified that she and the landlord had an agreement that the tenant would renovate the rental unit. She testified to a significant amount of work that she undertook within the unit and that she continued to undertake. She still resides in the rental unit at this time.

The tenant outlined the following issues with respect to her current tenancy and her application for dispute resolution;

- she has sought estimates from contractors to make further repairs and renovations to the rental unit in the amount of \$7840.00 and she seeks an award in this amount;
- she believes that the landlord is entering her rental unit without permission or notice and that the landlord may also be breaking in through the windows;

- she states that the rental unit is not in liveable condition in that the floors are giving off toxins and the walls are unclean;
- she submits that she has done significant work on the unit and it was intended that her rent would be reduced to reflect that work including;
  - fixing the fireplace in the unit
  - refurbishing the hardwood floors throughout the unit
  - painting the walls throughout the unit
  - cleaning up the backyard and painting the exterior fence;
- she claims she does not always have access to her rental unit and that the landlord has told her she cannot have guests;
- she claims that she would like to have a roommate but the landlord will not allow it;
- she testified that she has not paid rent but that the landlord interfered with her government issued cheques by reporting her lack of payment.

The landlord testified that the tenant was never authorized to reduce her rent or engage in restoration work within the rental unit. She does acknowledge that she agreed to allow the tenant to work on the garden.

The tenant's mother and father both testified at the hearing. The tenant's father testified that he was not aware of the details or nature of his daughter's tenancy agreement. The tenant's mother testified that she provided the funds for the security deposit on the unit and it was her understanding that the rent was \$500.00 per month. The tenant's mother did not testify that she was aware of a rent reduction for the purposes of working on the interior of the rental unit but she was aware that her daughter was doing renovations inside the unit.

### Analysis

The tenant failed to pay the outstanding rent within five days of receiving the 10 Day Notice to End Tenancy. The tenant also failed to make an application to cancel the notice to end tenancy pursuant to section 46(4) of the Act within five days of receiving the 10 Day Notice. This failure to respond within the appropriate timeline creates a presumption that the tenancy has ended. I find that the landlord is entitled to a 2 day Order of Possession.

With respect to the landlord's application for a monetary award, the landlord has submitted undisputed evidence in both testimony and documentary evidence that the tenant has failed to pay rent in September, October, November and December 2014.

Section 26(1) of the *Act* establishes that “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 has confirmed, in her testimony, that this rent is unpaid for September, October, November and December 2014. She indicated no intention to pay this outstanding rent.

Because the tenant has not made her application within the appropriate timeline and because I have found that the tenant has not paid her rent, I do not find it necessary to address the other matters raised in the tenant’s application. They relate to an ongoing tenancy and I find this tenancy has ended.

I am not satisfied that there was any agreement between these parties that work on the rental unit be undertaken for a reduction in rent. I accept the landlord’s testimony that the rent was in the amount of \$1,000.00 per month, based on all the evidence and testimony. I find that the landlord is entitled to \$3,000.00 in unpaid rent for the months of September, October and November.

Based on all of the testimony and evidence, the tenant is still residing in the rental unit as of the date of this hearing. I find that the tenant has not paid any rent for December 2014 and I find the landlord is also entitled to an additional \$1,000.00 in rent for the month of December. I do not find that there is sufficient evidence to support notice to the tenant or any agreement to pay a late fee of \$100.00 per month and decline to order this amount as part of the landlord’s monetary award.

The landlord testified that she continues to hold a security deposit of \$500.00 paid September 1, 2014. I will allow the landlord to retain the security deposit plus any applicable interest in partial satisfaction of the monetary award. No interest is applicable over this period.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$50.00 filing fee paid for this application.

The tenant’s application is dismissed in its entirety.

### Conclusion

I am granting the landlord an Order of Possession to be effective two days after notice is served to the tenant. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2

days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

I am making an Order in favour of the landlord as follows:

Rental Arrears for September 2014	\$1000.00
Rental Arrears for October 2014	1000.00
Rental Arrears for November 2014	1000.00
Rental Arrears for December 2014	1000.00
Less Security Deposit	-500.00
Recovery of Filing Fee for this application	50.00
<b>Total Monetary Award</b>	<b>\$3550.00</b>

The landlord is provided with formal Orders in the above terms. Should the tenant(s) fail to comply with these Orders, these Orders may be filed and enforced as Orders of the Provincial 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 19, 2014

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Residential Tenancy Branch

