



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, OPC, MND, MNR, FF, O, CNC, CNL, OLC, ERP, RP

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- an order of possession for unpaid rent and for cause pursuant to section 55;
- a monetary order for unpaid rent and for damage to the unit pursuant to section 67;
- authorization to recover his filing fee for this application from the tenant pursuant to section 72; and
- an "other" remedy that relates to an application by the landlord for an order of possession on the basis that the tenant was overholding the rental unit as the tenancy agreement formed a fixed-term tenancy that had concluded.

This hearing also dealt with the tenant's application pursuant to the Act for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) pursuant to section 49;
- 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 pursuant to section 32;
- an order to the landlord to make emergency repairs to the rental unit pursuant to section 33; and
- an "other" unspecified remedy.

The tenant and his advocate attended at this hearing. The landlord attended this hearing. Both parties were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The landlord testified that he served the tenant with the dispute resolution package on 18 November 2014 by registered mail. The landlord provided me with a Canada Post customer receipt that showed the same. The tenant testified that he did not receive the registered mailing as he has not picked up his mail because he has been stressed as a result of this tenancy, which has exacerbated his persistent and chronic mental health issues. While unfortunate, I find that this reason is insufficient to rebut the presumption of deemed service in section 90 of the Act. I find that the tenant was deemed served with the dispute resolution package on 23 November 2014, the fifth day after its mailing, pursuant to sections 89 and 90 of the Act.

The tenant testified that he served the landlord with the dispute resolution package. The landlord confirmed that he received the tenant's application. On the basis of this evidence, I am satisfied that the landlord was served with notice of this application pursuant to section 89 of the Act.

#### Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent? Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an order of possession for cause? In the further alternative, is the landlord entitled to an order of possession on the basis that the tenant is overholding on a fixed-term tenancy?

Should the landlord's 2 Month Notice be cancelled? Is the tenant entitled to an order that the landlord comply with the Act, regulations, or tenancy agreement? Is the tenant entitled to an order that the landlord make repairs to the rental unit? Is the tenant entitled to an "other" remedy?

#### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

The tenant and landlord signed a tenancy agreement dated 21 October 2013. The tenancy began 20 October 2013. Monthly rent of \$550.00 was due on the first. The

landlord continues to hold the tenant's security deposit in the amount of \$275.00, which was paid 17 October 2013.

The landlord testified that on 7 November 2014 he served the tenant with the 10 Day Notice by posting it on the tenant's door. This posting was witnessed by the builder of the unit, HT. The 10 Day Notice was issued for rent that was due on 6 November 2014 in the amount of \$464.00. The 10 Day Notice listed an effective date of 20 November 2014. The tenant confirmed that he received this notice.

The landlord testified that the tenant has not been paid any rent since 7 November 2014. The tenant testified that he could not pay rent for November because the Province is withholding the shelter portion of his assistance payments.

The tenant testified to various events that had occurred at the rental unit between the tenant and landlord. These included allegations of intentionally leaving the gate open so that dogs may defecate on the lawn and illegally entering the rental unit.

The tenant testified that there was damage to the rental unit that resulted in mould and damage to the floor. The landlord testified that he suspects that this was the result of water damage caused by the tenant. The tenant testified that the landlord should have provided alternate accommodations for him while the suite was undergoing renovations and that the landlord should provide him with a new sleeping mattress as his was damaged by mould. The tenant also requested his moving costs.

### Analysis

#### *Landlord's Application*

As noted above, the tenant did not have actual notice of the landlord's claim regarding damages to the rental unit as the tenant did not collect the registered mailing from the post office. Initially, I had indicated to the parties, that the monetary portion of this claim was best considered at a reconvened hearing; however, after considering the issue further, I have determined that the landlord's application in respect of this claim is premature. The tenant still has an opportunity to repair any damage that may have arisen during this tenancy before he vacates the rental premises. On this basis, I dismiss that portion of the landlord's claim with leave to reapply.

The landlord served the 10 Day Notice on 7 November 2014 by posting it to the tenant's door. This notice is deemed to be received by the tenant on 10 November 2014, the third day after its posting.

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

Subsection 26(1) of the Act sets out that a tenant must pay rent when it is due under the tenancy agreement unless the tenant has a right under the Act to deduct all or a portion of the rent.

The tenant did not pay any rent after the issuance of this notice. In addition, the tenant did not have any reason under the Act to lawfully deduct amounts from his rent. Accordingly, the tenancy ended on the effective date of the 10 Day Notice: 20 November 2014. As the tenancy has ended, the landlord is entitled to an order of possession.

The tenant had notice of the amount of rental arrears. As the tenant has admitted he has rental arrears for November in the amount of \$464.00, the landlord is entitled to a monetary order for that amount.

The landlord continues to hold the tenant's \$275.00 security deposit, plus interest, paid on 17 October 2013. Over that period, no interest is payable. Although the landlord's application does not seek to retain the security deposit, using the offsetting provisions of section 72 of the Act, I allow the landlord to retain the security deposit in partial satisfaction of the monetary award.

As I have determined that the landlord is entitled to an order of possession on the basis of the 10 Day Notice, I need not consider the landlord's alternative applications for an order of possession as consideration of these reasons would not result in a substantive change in this decision. As a result, this portion of the landlord's claim is dismissed as it is moot.

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.

### *Tenant's Application*

As the landlord has been issued an order of possession on the basis of the 10 Day Notice, I need not consider the tenant's application to cancel the 1 Month Notice. This portion of the tenant's claim is dismissed as the issue is moot.

It does not appear the landlord ever issued a 2 Month Notice. Accordingly, this application is dismissed without leave to reapply.

I inquired of the tenant what repairs he was seeking from the landlord. The tenant initially withdrew his application as it relates to repairs. He later reinstated this portion of the application. The tenant did not tell me what he wants repaired. As the tenant has not provided me with any repairs that he wants the landlord to make and this tenancy is ending imminently, I dismiss this portion of his claim without leave to reapply.

The tenant seeks an order that the landlord comply with the Act. When asked, the tenant told me this request relates to compensation for the costs of his mattress, the costs of relocating and for an early return of a portion or all of his security deposit. There is no indication on the tenant's application that he is seeking a monetary order. The applications in relation to compensation for the costs of his mattress and the costs of relocating were not clearly indicated in the tenant's application in any other way. Thus, I find that the landlord did not have proper notice of this claim. Because the landlord did not have notice of this claim, I dismiss this portion of the tenant's claim with leave to reapply.

Section 38 of the Act requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. The tenancy has not ended. As such, the tenant's application in relation to return of the security deposit has been made too early; however, as set out above, I have applied the security deposit amount to the landlord's monetary order. As such, I dismiss this portion of the tenant's claim.

The tenant also seeks an "other" remedy. The tenant could not tell me what he meant by this. This portion of the tenant's claim is dismissed with leave to reapply.

### Conclusion

The landlord is provided with a formal copy of an order of possession. Should the tenant(s) fail to comply with this order, this order may be filed and enforced as an order of the Supreme Court of British Columbia.

I issue a monetary order in the landlord's favour in the amount of \$239.00 under the following terms:

<b>Item</b>	<b>Amount</b>
Unpaid November Rent	\$464.00
Recovery of Filing Fee for the Landlord's Application	50.00
Offset Security Deposit	-275.00
<b>Total Monetary Order</b>	<b>\$239.00</b>

The landlord's claim for damages to the unit is dismissed with leave to reapply.

The tenant's application as it relates to his requests to cancel the 1 Month Notice, to cancel the 2 Month Notice and for an order that the landlord make emergency repairs or general repairs are dismissed without leave to reapply.

The tenant's application as it relates to his request for the return of his security deposit is dismissed. The tenant's application as it relates to the request for compensation for his moving costs and his mattress, and his "other" remedy are dismissed with leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: December 15, 2014

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Residential Tenancy Branch

