



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 0751866 BC LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes:

CNR, OLC, ERP, RP, and LRE

### Introduction

This hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied for an Order requiring the Landlord to make emergency repairs/repairs to the rental unit; for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* or the tenancy agreement; for an Order suspending or setting conditions on the Landlord's right to enter the rental unit; and to cancel a Notice to End Tenancy for Unpaid Rent.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

The Tenant stated that the Application for Dispute Resolution, the Notice of Hearing, and documents she wishes to rely upon as evidence were served to the Landlord by registered mail on December 15, 2014. The Landlord acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

On December 22, 2014 the Tenant submitted additional documents to the Residential Tenancy Branch, which the Tenant wishes to rely upon as evidence. The Tenant stated that these documents were served to the Landlord by registered mail on December 22, 2014. The Landlord acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

The Landlord submitted no evidence.

### Issue(s) to be Decided

Is there a need to issue an order requiring the Landlord to make repairs to the rental unit and/or to comply with the *Act*?

Is there a need to suspend or set conditions on the Landlord's right to enter the rental unit?

Should the Notice to End Tenancy for Unpaid Rent be set aside?

### Background and Evidence

The Landlord and the Tenant agree that the Tenant was living in the rental unit prior to December 01, 2014; however she was not named on a tenancy agreement prior to November 23, 2014. The Tenant stated that she was living in the rental unit and paying rent to her roommate, who had a tenancy agreement with the Landlord. She stated that prior to December 01, 2014 she paid a security deposit of \$375.00 to her roommate, which she believes was given to the Landlord.

In an email to the Tenant from the Agent for the Landlord, dated December 10, 2014, the Agent acknowledged receiving the Tenant's security deposit of \$375.00.

The Tenant stated that on November 23, 2014 she and her roommate signed a tenancy agreement which named a person with the initials "N.C." as the Landlord. The Tenant stated that the person with the initials "N.C." was acting as an agent for the Landlord on November 23, 2014. This tenancy agreement, which was submitted in evidence, indicates that the rent of \$1,425.00 is due by the first day of each month and that a security deposit of \$712.50 is required.

The Agent for the Landlord stated that the person with the initials "N.C." was acting as an agent for the Landlord on November 23, 2014 and that the Landlord was not aware that this agreement existed until it was shown to him by the Tenant.

The Tenant stated that on December 07, 2014 she signed a tenancy agreement which named the Respondent as the Landlord. This tenancy agreement, which was submitted in evidence, indicates that the rent of \$1,425.00 is due by the first day of each month and names the Applicant as the only Tenant.

The Tenant stated that she entered into this new agreement because a person with the initials "D.B.", who was acting as an agent for the Landlord on December 07, 2014, informed her that the person with the initials "N.C." was no longer acting as an agent for the Landlord and because the other person named as a tenant in the previous tenancy agreement was no longer residing in the unit.

The Agent for the Landlord stated that the person with the initials "D.B." was acting as an agent for the Landlord on December 07, 2014. He stated that he believes this second agreement was created because the Tenant did not receive a copy of the first agreement.

The Tenant stated that she initially agreed to pay a security deposit of \$712.50. She stated that when she signed the tenancy agreement on December 07, 2014 the agent acting on behalf of the Landlord agreed to reduce the security deposit to \$337.50.

The Tenant stated that the agent acting on behalf of the Landlord on December 07, 2014 amended the amount of the security deposit on the agreement; that this agent made boxes beside the amendment; that the Tenant initialed one of the boxes; and that

this agent indicated she would also initial the amendment. The amendment does not appear to be initialed by anyone other than the Tenant.

The Agent for the Landlord agrees that the tenancy agreement that was signed on December 07, 2014 has been amended to show the security deposit is \$337.50. He stated that he has not discussed this amendment with the agent who was acting on behalf of the Landlord on December 07, 2014.

The Tenant stated that on November 20, 2014 she paid \$750.00 in rent for December. She submitted a copy of a receipt which she stated was issued by the agent for the Landlord with the initials "N.C.", which corroborates this testimony. The receipt clearly shows the payment was made for rent for December.

The Agent for the Landlord stated that the Landlord has no record of a payment made on November 20, 2014. The Agent for the Landlord stated that he does not know whether the signature on this receipt belongs to the agent for the Landlord with the initials "N.C.".

The Agent for the Landlord stated that the Landlord has a record of a \$1,000.00 payment being made on November 25, 2014. He stated that he believes this payment was made to a former agent for the Landlord by the Tenant's former roommate.

The Tenant stated that she has been informed that a \$1,000.00 payment was made. She surmises that this payment included the \$750.00 she paid on November 20, 2014, although she is not certain of that. She stated that she believes the Landlord is attempting to collect unpaid rent for periods prior to December 01, 2014, which she believes her former roommate is responsible for paying.

The Tenant stated that on December 07, 2014 she received a Ten Day Notice to End Tenancy for Unpaid Rent from the agent for the Landlord with the initials "D.B.". The Agent for the Landlord stated that he believes this Notice was personally served on December 07, 2014.

The Tenant and the Landlord agree that on December 08, 2014 the Tenant paid \$762.50 to the agent for the Landlord with the initials "D.B.". The Tenant submitted a copy of a receipt which indicates \$762.50 was received and reads: "\$425.00 out of \$1,000.00 paid to (unit address) \$337.50 for security deposit owing".

The Tenant stated that she was not certain how her payment was being applied to rent, as the agent was making reference to a \$1,000.00 payment that had been made. She stated that she wanted the \$762.50 payment to be applied to any outstanding rent and any remainder to be applied to the security deposit. She stated that she is not certain if she is required to pay an additional amount for the security deposit.

The Tenant is seeking an Order requiring the Landlord to paint the rental unit. The Landlord and the Tenant agree that the Tenant's former roommate partially painted the rental unit. The Tenant contends that the Agent for the Landlord agreed to repaint the remainder of the unit. The Agent for the Landlord stated that they discussed the need for painting and he told the Tenant he would consider it. The Tenant submitted a copy of an email from the Agent for the Landlord, dated December 10, 2014, in which the Agent indicates he will investigate the cost of painting.

At the hearing the Tenant withdrew the application for an Order requiring the Landlord to clean the carpet, as the carpet has been cleaned.

The Tenant is seeking an Order requiring the Landlord to repair a leak near the ceiling of the basement bathroom. The Tenant stated that she believes there is a leak as there is damage to the ceiling which she believes is consistent with a leak, although she does not know if the area is wet. The Agent for the Landlord stated that he inspected the damaged area, which is not wet, and he does not believe there is a leak.

The Tenant is seeking an Order requiring the Landlord to repair the shower faucet. The Tenant stated that water leaks out of the handle that activates the shower head whenever the shower is running. She stated that the handle does not leak when the shower is not running. The Agent for the Landlord stated that he cannot recall if the problem was ever reported to the Landlord and he has not inspected the faucet.

The Tenant is seeking an Order suspending or setting conditions on the Landlord's right to enter the rental unit. She is not aware that anyone representing the Landlord has entered her unit without lawful authority.

The Tenant is seeking an Order requiring the Landlord to provide a receipt whenever she pays her rent in cash. She stated that the Landlord has never failed to comply with the Landlord's obligation to provide a receipt when rent is paid in cash.

### Analysis

On the basis of the undisputed evidence, I find that on November 23, 2014 the Tenant entered into a written tenancy agreement for the rental unit and on December 07, 2014 the Tenant entered into a second written tenancy agreement for the rental unit, both of which were for a tenancy agreement that began on December 01, 2014. I find that the parties are obligate to comply with the terms of the agreement that was entered into on December 07, 2014, as it is the most recent document.

On the basis of the testimony of the Tenant and in the absence of evidence to the contrary, I find that the Tenant was merely an occupant in the rental unit prior to December 01, 2014 and that she was paying rent to her roommate.

On the basis of the undisputed evidence and the tenancy agreement dated December 07, 2014, I find that the Tenant agreed to pay monthly rent of \$1,425.00 by the first day of each month.

On the basis of the testimony of the Tenant and the receipt dated November 20, 2014, I find that on November 20, 2014 the Tenant paid \$750.00 in rent for December to an agent for the Landlord. In reaching this conclusion I was influenced by my conclusion that the signature on this receipt is similar to the signature on the tenancy agreement dated November 23, 2014, which appears to have been signed by the agent for the Landlord with the initials "N.C.". I find this receipt highly compelling.

In reaching this conclusion I have placed limited weight on the Agent for the Landlord's testimony that they have no record of the \$750.00 payment. I find it entirely possible that the payment was made and the payment has simply not been recorded or that this payment was included in the \$1,000.00 payment that was recorded on November 25, 2014.

As the Tenant had only paid \$750.00 in rent for December by December 06, 2014, I find that the Landlord had the right to serve a Ten Day Notice to End Tenancy for Unpaid Rent for the outstanding \$675.00. On the basis of the undisputed evidence, I find that the Landlord did serve a Ten Day Notice to End Tenancy for Unpaid Rent on December 07, 2014.

On the basis of the undisputed evidence, I find that the Tenant paid \$762.50 to the Landlord on December 09, 2014. On the basis of the testimony of the Tenant, I find that the payment was tendered for rent and that it should be applied to the rent that was due. I therefore find that the Tenant paid all of the outstanding rent for December on December 09, 2014 and that the remaining \$87.50 should be applied to the security deposit.

Section 46(4) of the *Act* stipulates that within five days of receiving a Notice to End Tenancy for Unpaid Rent the Tenant may pay the overdue rent, in which case the Notice has no effect. As the Tenant paid the overdue rent on December 09, 2014, I find that the Ten Day Notice to End Tenancy for Unpaid Rent has no effect. I therefore grant the Tenant's application to set aside the Ten Day Notice to End Tenancy for Unpaid Rent, dated December 07, 2014.

I note that even if I were to conclude that the Tenant had a tenancy agreement with the Landlord prior to December 01, 2014, I would conclude that tenancy had ended and that a new tenancy began on December 01, 2014. The Landlord would, therefore, not have the right to end this new tenancy as a result of rent owing from the previous tenancy.

On the basis of the testimony of the Tenant and the tenancy agreement dated December 07, 2014, I find that the Tenant agreed to pay a security deposit of \$337.50.

On the basis of the testimony of the Tenant and the email from the Agent for the Landlord, dated December 10, 2014, I find that the Tenant paid a security deposit of \$375.00 sometime prior to December 01, 2014. I find this payment should be applied to the current tenancy. As the Landlord now holds a security deposit of \$462.50 and the Tenant is only obligated to pay \$337.50, I find that no additional money is due for the security deposit.

Section 32(1) of the *Act* requires landlords to provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and, having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant. As there is no evidence the rental unit requires painting in accordance with this section, I cannot conclude that the Landlord is obligated to repaint the unit.

I find that the Tenant submitted insufficient evidence to establish that the Landlord promised to paint the unit. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Tenant's claim that painting was promised and by the email, date December 10, 2014, which corroborates the Agent for the Landlord's testimony that he told the Tenant he would consider painting. As there is insufficient evidence to show that painting was promised, I dismiss the Tenant's application for an Order requiring the Landlord to paint the unit.

I find that the Tenant has submitted insufficient evidence to establish there is a leak near the ceiling of the basement bathroom. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Tenant's suspicion that the damage has been caused by a leak or that refutes the Agent for the Landlord's conclusion that the damage was not caused by water. I therefore dismiss the Tenant's application for an Order requiring the Landlord to repair a leak near this ceiling.

I find that a shower handle that leaks only when the shower is running does not contravene any health, safety and housing standards that I am aware of nor does it render the rental unit unsuitable for occupation. I find this is a minor deficiency and I dismiss the Tenant's application for an Order requiring the Landlord to repair the faucet.

As there is no evidence that anyone representing the Landlord has entered the rental unit without lawful authority, I dismiss the Tenant's application for an Order suspending or setting conditions on the Landlord's right to enter the rental unit.

As there is no evidence that the Landlord has failed to comply with the Landlord's obligation to provide a receipt when rent is paid in cash, I find there is no need to issue an Order requiring the Landlord to comply with this legal obligation.

Conclusion

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 31, 2014

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Residential Tenancy Branch

