



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, OPR, MNR, MNDC, MNSD, FF

### Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”).

The Tenant applied for:

1. An Order cancelling a Notice to End Tenancy - Section 46.

The Landlord applied for:

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

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions under oath.

### Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the Landlord entitled to an Order of Possession?

Is the Landlord entitled to the monetary amounts claimed?

### Background and Evidence

The tenancy began on July 1, 2014. Rent of \$1,350.00 is payable in advance on the first day of each month. The Landlord reduces the amount payable on the first by \$100.00 in reimbursement for utilities leaving \$1,250.00 payable each month. At the outset of the tenancy, the Landlord collected \$600.00 as a security deposit from the Tenant. No move-in inspection and report was completed.

The Parties do not dispute that the Tenant failed to pay the full rent for October 2014 owing \$400.00 in arrears and failed to pay any rent in November 2014. On November 2, 2014 the Landlord posted a 10 day notice for unpaid rent (the "Notice") by posting the Notice on the door. The Parties agree that no rent has been paid for December 2014 and the Tenant has not paid any arrears. The Landlord claims \$2,900.00.

The Tenant states that the Tenant withheld the rent in lieu of the cost of emergency repairs paid for by the Tenant. The Tenant described problems with pipes leaking and wires burning. The Tenant states that the Landlord was repeatedly asked to make repairs but that the Landlord did nothing and did not look at the unit. The Tenant states that after waiting until October 2014 for the Landlord to act, the Tenant had the repairs done that month at a total cost of \$2,402.00. The Tenant states that the electrical repairs were made by the Tenant's father, a licenced electrician, and that the Tenant paid his father \$1,430.00 for the repairs. The Tenant states that he paid a service company \$972.00 for the electrical repairs. The Tenant states that he made an application for dispute resolution in relation to these repairs but withdrew the application due to late evidence. The Tenant states that he did not provide any invoices to the Landlord asking for payment as he just yesterday received the invoice from the service company.

The Landlord states that the Tenant never said anything about repairs until the Tenant was short on the October 2014 rent. The Landlord states that the Tenant has never shown the Landlord anything that needed repairs and never told the Landlord that the Tenant made any repairs. The Landlord states that the Tenant does not answer the

Landlord's calls and that when the Landlord attends the unit the Tenant never answers the door even when the Landlord can hear people in the unit.

### Analysis

Section 26 of the Act provides 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. Section 33 of the Act provides that a tenant may deduct the cost of emergency repairs from rent where the landlord has been given a written account of the emergency repairs accompanied by a receipt for each amount claimed.

Without determining whether the Tenant's claim for reimbursement has any merit, given the Tenant's evidence that no invoices for the costs of those repairs have ever been provided to the Landlord, I find that the Tenant has not substantiated on a balance of probabilities any right to withhold repair costs from the rent. As such and based on the undisputed evidence of unpaid rent and arrears, I find that the Notice is valid and that the Tenant is not entitled to a cancellation of the Notice. The Tenant's application is dismissed.

As the Notice is valid I find that the Landlord is entitled to an order of possession. Based on the undisputed evidence of unpaid rent and considering that the Tenant, in effect, pays \$1,250.00 rent monthly, I find that the Landlord is entitled to \$400.00 for October rental arrears, \$1,250.00 for November rental arrears and \$1,250.00 for December rental arrears for a total amount of **\$2,540.00**. As the Landlord has been successful I find that the Landlord is also entitled to recovery of the **\$50.00** filing fee for a total entitlement of **\$2,590.00**. Setting the security deposit of **\$600.00** plus zero interest off the entitlement leaves **\$1,990.00** owed by the Tenant to the Landlord.

### Conclusion

**I grant** an Order of Possession to the Landlord. 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 order** that the Landlord retain the **deposit** and interest of \$600.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **\$1,990.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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 11, 2014

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Residential Tenancy Branch

