



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF; CNR, RR

### Introduction

This hearing dealt with applications from both the landlord and the tenant. The landlord's application pursuant to the *Residential Tenancy Act* (the Act) was for:

- an order of possession for unpaid rent 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;
- authorization to recover its 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; and
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65.

Both parties attended the hearing and 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 was represented by its agent (the agent).

The agent testified that she served the tenant with the dispute resolution package by registered mail. The tenant testified that she received the dispute resolution package. On the basis of this evidence, I am satisfied that the tenant was served with the dispute resolution package pursuant to section 89 of the Act.

The agent testified that she served the tenant with the 10 Day Notice on 3 December 2014 by posting the notice to the tenant's door, which the tenant confirmed she

received. On the basis of this evidence, I am satisfied that the tenant was deemed served with the 10 Day Notice pursuant to sections 88 and 90 of the Act.

*Preliminary Issue – Tenant’s Request for Adjournment*

In the course of providing her evidence, the tenant indicated that she required an adjournment in order to have a witness appear who could verify that an agent of the landlord attended at the unit to measure the unit for window coverings.

*Residential Tenancy Branch, Rules of Procedure*, Rule 6.4 sets out the criteria for granting an adjournment:

Without restricting the authority of the arbitrator to consider other factors, the arbitrator must apply the following criteria when considering a party’s request for an adjournment of the dispute resolution proceeding:

- (a) the oral or written submissions of the parties;
- (b) whether the purpose for which the adjournment is sought will contribute to the objectives set out in Rule 1;
- (c) whether the adjournment is required to provide a fair opportunity for a party to be heard, including whether a party had sufficient notice of the dispute resolution proceeding;
- (d) the degree to which the need for the adjournment arises out the intentional actions or neglect of the party seeking the adjournment; and
- (e) the possible prejudice to each party.

I informed the tenant at the hearing that I would not adjourn the hearing and that the hearing would continue as scheduled. Although I considered all the criteria in 6.4, I declined to adjourn the hearing as the tenant had ample notice of the hearing to arrange for the witness to attend, the evidence proposed is not relevant to this matter and would not aid in its determination, and it would unfairly prejudice the landlord to reschedule the hearing.

Issue(s) to be Decided

Should the landlord’s 10 Day Notice be cancelled? If not, is the landlord entitled to an order of possession? 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 the landlord entitled to recover the filing fee for this application from the tenant? Is the tenant entitled to a reduction in rent for a reduction in the value of the tenancy agreement?

### Background and Evidence

This tenancy began 28 August 2014. Monthly rent of \$1,175.00 is due on the first. The agent testified that the landlord continues to hold the tenant's security deposit of \$587.50 and pet damage deposit of \$50.00.

This tenancy is subject to a tenancy agreement, dated 28 August 2014. The tenancy agreement indicates that rent included the following services or facilities:

- water;
- stove and oven;
- refrigerator;
- carpets;
- laundry;
- garbage collection; and
- parking.

The landlord issued the 10 Day Notice on 3 December 2014. The 10 Day Notice was given for outstanding rent of \$2,300.00 that was due on 1 December 2014. The agent testified that the tenant has not paid rent for November, December, and January. The agent testified that total rent arrears are \$3,525.00. The tenant admits that she has not paid rent for these months. The tenant testified that she was subject to an unexpected cut to her assistance payments from the provincial government and was unable to pay her rent.

The tenant testified that she has not conducted any emergency repairs to the rental unit and that she does not have an order of the Residential Tenancy Branch allowing her to deduct rent.

The tenant has applied to reduce her rent. The tenant testified to several deficits in the rental unit in support of her application to reduce rent:

- there were no window coverings in the rental unit;
- the fireplace does not work;
- the fridge that came with the rental unit was unusable and not replaced until 20 September 2014;
- the furnace pilot light goes out requiring the tenant to wake early to light it; and
- rain water pools near the front door and enters the unit under the door.

The tenant testified that there were no window coverings or curtains provided by the landlord. The tenant testified that the landlord offered to provide window coverings if

the tenant agreed to an increase of \$30.00 per month. The tenant testified that she would have not rented the rental unit had she known that window coverings were not part of the tenancy agreement. The tenant testified that the fireplace does not work. The agent testified that the fireplace and window coverings were not provided as services or facilities under the tenancy agreement.

The tenant testified that when she moved into the rental unit, the fridge was not usable. The tenant testified that she had to wait nearly a month to have a new fridge. The agent agreed that the fridge was not usable. The agent testified that she immediately offered a black fridge to the tenant, but the tenant would not accept a black fridge. The agent testified that there was a delay in securing a white fridge. The tenant testified that she had forgotten the landlord had offered to provide a black fridge. The tenant testified that the rental unit is not the "projects" and that a black fridge would have not matched her white stove and white cupboards. The tenant testified that the white fridge provided by the landlord is too small and is insufficient for her family's use. The tenant testified that she was unable to store a four-litre container of milk in the fridge. The tenant testified that the replacement fridge is twelve cubic feet and that the original fridge was eighteen cubic feet. The tenant submitted that the replacement fridge is the type of fridge one would find in a recreational vehicle. The landlord disagreed with this conclusion and stated that the fridge was of an appropriate size and was sufficient for three people.

The tenant testified that the furnace pilot light will not remain lit. The tenant testified that she has to light the pilot light whenever she needs heat. The agent testified that the tenant did not tell her that the furnace was not working. The agent testified that she had the furnace serviced at the beginning of the tenancy. The tenant testified that she told the landlord at the end of October that the furnace required repairs.

The tenant testified that water is entering the rental unit near the front door. The tenant testified that rainwater seeps under the door. The agent agreed that water was pooling near the tenant's front door, but testified that the tenant never brought this to the landlord's attention. The tenant testified that she did tell the landlord that water was entering the rental unit. The agent testified that she noticed the pooling water herself when she was next door to the rental until working on another property and saw the pooling. The agent testified she arranged for someone to clean the gutters to avoid this pooling.

The tenant submits that the value of her tenancy has been decreased by \$325.00 to \$375.00 per month.

## Analysis

### *Landlord's Application*

Subsection 26(1) of the Act sets out:

A tenant must pay rent when it is due under the tenancy agreement....unless the tenant has a right under this Act to deduct all or a portion of the rent.

A tenant may deduct amounts from rent where the tenant has completed emergency repairs in accordance with the Act, or where the tenant has an order of the Residential Tenancy Branch entitling the tenant to deduct amounts.

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.

I find the tenant did not pay her rent when it was due or within the five days provided for pursuant to section 46. The tenant did not provide any evidence that would indicate that she was entitled to deduct any amount from rent. The tenant does not dispute that she has not paid her rent. As the tenant is not entitled to have the 10 Day Notice cancelled, I find that the landlord is entitled to a two-day order of possession.

I find that the landlord has proven that the tenant failed to pay rent for November, December, and January and that the landlord is entitled to those amounts. I find that the landlord is entitled to recover \$3,375.00 from the tenant.

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 landlord applied to keep the tenant's security deposit and pet damage deposit. I allow the landlord to retain the deposits in partial satisfaction of the monetary award. No interest is payable over this period.

### *Tenant's Application*

I will now consider the tenant's application for a rent reduction.

I find that window coverings and the fire place were not facilities or services that the landlord agreed to provide under the tenancy agreement. Accordingly, I find that the tenant is not entitled to a rent reduction for the landlord's failure to provide these items.

I find that the reason that the tenant was without a fridge for approximately one month was because she was being selective about colour. I was not provided with any evidence from the tenant that the black fridge was unusable; merely that she preferred a white fridge. I find that the twelve cubic foot fridge is sufficient to meet the landlord's obligations under the tenancy agreement to provide a fridge suitable for these accommodations and that there was no representations made by the landlord as to the size of the fridge that would be provided. Accordingly, I find that the tenant is not entitled to a rent reduction for the fridge.

There are several conflicts in the testimony I received in the hearing. Chiefly, the conflicts involve differences in whether or not the tenant notified the landlord that repairs were required to her rental unit: Where the tenant's and agent's testimonies conflict, I prefer the testimony of the agent. I prefer the agent's testimony as I found the agent to be forthright in providing her testimony and found her version of events to be more plausible. Thus, I find that the tenant did not inform the landlord about the problems with the water leak near the door or the furnace in order to allow the landlord an opportunity to fix the issues. Accordingly, I find that the tenant is not entitled to a rent reduction for the purported problems with either the fridge or the water leak.

The tenant's application is dismissed without 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 \$2,937.50 under the following terms:

<b>Item</b>	<b>Amount</b>
Unpaid November Rent	\$1,175.00
Unpaid December Rent	1,175.00
Unpaid January Rent	1,175.00
Offset Security Deposit Amount	-587.50
Offset Pet Damage Deposit Amount	-50.00
Recovery of Filing Fee for this Application	50.00
<b>Total Monetary Order</b>	<b>\$2,937.50</b>

The landlord is provided with these orders in the above terms and the tenant(s) must be served with this order as soon as possible. Should the tenant(s) fail to comply with these orders, these orders may be filed in the Small Claims Division of the Provincial Court and enforced as orders of that Court.

The tenant's application is dismissed without 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: January 15, 2015

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Residential Tenancy Branch

