



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding THIRD ESTATES LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPC, MND, MNR; CNC

### Introduction

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

- an order of possession for cause pursuant to section 55;
- a monetary order for unpaid rent and for damage to the residential property pursuant to section 67;
- authorization to recover its filing fee for this application from the tenant pursuant to section 72.

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.

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 agents. The agents are employees of the landlord.

The agent MM testified that the landlord served the tenant with the dispute resolution package (including all evidence before me) on 6 March 2015 by registered mail. The landlord provided me with a Canada Post tracking number that showed the same. The tenant did not raise any issues with service. 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 SD testified that he served the tenant with the 1 Month Notice on 25 February 2015 by posting the notice to the tenant's door. The tenant applied to dispute this notice. On the basis of this evidence, I am satisfied that the tenant served with the 1 Month Notice pursuant to section 88 of the Act.

The agents acknowledged receipt of the tenant's dispute resolution package. On the basis of this evidence, I find that the landlord was served with the tenant's dispute resolution package pursuant to section 89 of the Act.

### Issue(s) to be Decided

Should the landlord's 1 Month 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 and losses arising out of this tenancy? Is the landlord entitled to recover the filing fee for this application from the tenant?

### 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.

This tenancy began 1 September 2013. The landlord and tenant entered into a tenancy agreement dated 31 August 2013. Monthly rent of \$975.00 is due on the first. The agent MM testified that the landlord collected a security deposit of \$487.50 on or about 1 September 2013. The rental unit is on the third floor of the residential property.

I was provided with five 10 Day Notices to End Tenancy for Unpaid Rent or Utilities:

10 Day Notice dated 2 January 2014. Given for \$975.00 of rent that was due 1 January 2014 (as corrected by amendment).

10 Day Notice dated 3 November 2014. Given for \$975.00 of rent that was due 1 November 2014.

10 Day Notice dated 2 December 2014. Given for \$975.00 of rent that was due 1 December 2014.

10 Day Notice dated 2 February 2015. Given for \$975.00 of rent that was due 1 February 2015.

10 Day Notice dated 2 March 2015. Given for \$975.00 of rent that was due 1 March 2015.

The agent SD testified that he served the five 10 Day Notices to the tenant. With the exception of the final notice, the tenant would pay the rent due under the various notices within five days resulting in cancellation of the notice.

On 5 December 2014, a shareholder of the landlord wrote to the tenant:

*Unfortunately you seem to usually pay your rent late which causes great inconvenience to us.*

*We are permitted to give you a 1 month's notice (sic) to end tenancy according to the Residential Tenancy Branch.*

*This serves as your warning.*

*If you are not on time with your rent we will have to give you the 1 month notice so this indeed is your last chance.*

On 25 February 2015, the landlord served the 1 Month Notice to the tenant by posting the notice to the tenant's door. The 1 Month Notice was dated 25 February 2015 and set out an effective date of 31 March 2015. The 1 Month Notice set out various reasons for which it was being given including that the tenant was repeatedly late paying rent.

The agent SD testified that the tenant has \$975.00 in rent arrears from March 2015. The agent SD testified that the tenant as not provided the landlord with any receipts for emergency repairs and that there are no outstanding orders of this Branch in respect of this tenancy.

The agent SD testified that the tenant or the tenant's children caused water to leak from the rental unit to the units below. Two units were affected. Both of these units were directly below the rental unit: one on the second floor (Unit A) and one on the first floor (Unit B). The agent SD testified that the first water incident was caused by the tenant's children playing in the bathtub. The agent SD testified that the second water incident was caused by the tenant's oldest child playing with the sink.

The landlord provided me with various photographs. The various photographs depict the rental unit, Unit A and Unit B:

- sink in bathroom of the rental unit filled with water until it was level with the top of the sink;
- floor of bathroom of the rental unit covered in water;
- water dripping from the ceiling for the bathroom in Unit A;
- paint peeling in the bathroom of Unit A;
- a bucket full of water on the toilet of the bathroom in Unit A;
- the ceiling of the bathroom in Unit A with pieces of the ceiling removed;
- water on the floor of the bathroom in Unit A;
- water leaking from the smoke detector and ceiling of Unit B outside the door to the bathroom;; and
- water on the laminate flooring of Unit B outside the bathroom door.

On 5 January 2015, a shareholder of the landlord wrote to the tenant. In that letter the shareholder demanded that the tenant compensate the landlord \$500.00 for the water damage to the three units. This letter was sent by registered mail. The letter was sent again in February.

The tenant testified that the landlord would come to the residential property to collect rent for a month on the last day of the previous month. The tenant testified that she would pay her rent on the second or third, but by the fifth "for sure". The tenant testified that she did not pay March's rent.

The tenant testified that the first water incident was caused by the children playing in the bathtub. The tenant testified that the second time was the result of her oldest child playing with the sink. The tenant testified that water enters from the roof of the rental unit when it rains. The tenant submitted that the damage was caused because of the poor grouting in the bathroom that meant that the floor was not sealed. The tenant provided various pictures that showed that the grouting was in poor repair.

The agent SD testified that there should not be water on the floor of the bathroom.

## Analysis

In an application to cancel a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met.

On 25 February 2015, the landlord served the tenant with the 1 Month Notice. The 1 Month Notice set out that it was being given as:

- the tenant is repeatedly late paying rent;
- the tenant or person permitted on the property by the tenant has:
  - significantly interfered with or unreasonably disturbed another occupant or the landlord;
- the tenant has engaged in illegal activity that has, or is likely to:
  - damage the landlord's property;
  - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.
- the tenant has not done required repairs of damage to the unit.

Paragraph 47(1)(b) of the Act permits a landlord to terminate a tenancy by issuing a 1 Month Notice in cases where a tenant has been repeatedly late paying rent.

*Residential Tenancy Policy Guideline, "38. Repeated Late Payment of Rent"* provides that:

Three late payments are the minimum number sufficient to justify a notice under these provisions.

It does not matter whether the late payments were consecutive or whether one or more rent payments have been made on time between the late payments.

However, if the late payments are far apart an arbitrator may determine that, in the circumstances, the tenant cannot be said to be "repeatedly" late.

A landlord who fails to act in a timely manner after the most recent late rent payment may be determined by an arbitrator to have waived reliance on this provision.

In exceptional circumstances, for example, where an unforeseeable bank error has caused the late payment, the reason for the lateness may be considered by an arbitrator in determining whether a tenant has been repeatedly late paying rent.

The tenant has admitted to paying rent late on five occasions. Four of these late rent payments are the last four consecutive months. I find that the landlord has not waived its right to act on the late payments. This is supported by the landlord's letter of 5 December 2014. The tenant submits that the landlord did not collect rent on the first of the month, but rather at the end of the month previous. I am not persuaded that this is type of "exceptional circumstance" that is sufficient to show that the tenant was not repeatedly late paying rent. The tenant has an obligation to pay her rent in full and on time and she did not. I find that the landlord has proven, on a balance of probabilities, that the tenant was repeatedly late paying rent. The 1 Month Notice is valid.

The tenant's application to cancel the landlord's 1 Month Notice is dismissed without leave to reapply. As the tenant is not entitled to have the 1 Month Notice cancelled, I find that the landlord is entitled to a two-day order of possession.

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.

The tenant admits that she did not pay March's rent when it was due or at all. I find that the landlord has proven its entitlement to this amount.

Subsection 32(1) of the Act requires a landlord to 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 the tenant. Subsection 32(3) of the Act requires a tenant to repair damage to the rental unit or common areas that was caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant. Caused means that the actions of the tenant or his visitor logically led to the damage of which the landlord complains.

Section 67 of the Act provides that, where an arbitrator has found that damages or loss results from a party not complying with the Act, an arbitrator may determine the amount of that damages or loss and order the wrongdoer to pay compensation to the claimant. The claimant bears the burden of proof. The claimant must show the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the Act by the wrongdoer. If this is established, the claimant must provide evidence of the monetary amount of the damage or loss. The amount of the loss or damage claimed is subject to the claimant's duty to mitigate or minimize the loss pursuant to subsection 7(2) of the Act.

The tenant admits that her children caused excessive amounts of water to end up on the floor of the bathroom; however, the tenant submits that it was the poor maintenance of the bathroom floor that caused the water to leak to the floors below. I find that the tenant's children caused excessive amounts of water to end up on the floor of the bathroom. I find that the landlord's poor maintenance of the bathroom floor caused the water to leak to the floors below somewhat faster than it would have had the bathroom floor been properly sealed; however, given the excessive amount of water shown collected in the bathroom of the unit directly beneath the rental unit, I find that the amount of damage would not have been any worse had the bathroom floors been in compliance with subsection 32(1) of the Act. Bathroom floors are expected to have a certain amount of water on them, but the amount of water the rental unit's floors were subjected to was far in excess of this normal amount.

I find that the landlord has proven its entitlement to \$500.00, which represents its costs of repairing the flood damage.

As the landlord has been successful in its application, it is entitled to recover its filing fee from the tenant.

The agent MM testified that the landlord continues to hold the tenant's security deposit in the amount of \$487.50 that was collected 1 September 2013. No interest is payable over this period. 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.

At the conclusion of the hearing the agent MM asked that I send a copy of this decision and any orders by fax to the landlord. At the hearing, I agreed to this request but asked that the landlord, as a courtesy, provide a copy of the faxed decision and orders to the tenant in the event that they served any orders on the tenant. The agent MM agreed to this request.

### Conclusion

The tenant's application is dismissed without leave to reapply.

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 \$1,037.50 under the following terms:

<b>Item</b>	<b>Amount</b>
Unpaid March Rent	\$975.00
Flood Damage	500.00
Offset Security Deposit Amount	-487.50
Recovery of Filing Fee for this Application	50.00
<b>Total Monetary Order</b>	<b>\$1,037.50</b>

The landlord is provided with this order 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, this order may be filed in the Small Claims Division of the Provincial Court and enforced as orders of that Court.

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: March 30, 2015

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Residential Tenancy Branch



