



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding ATIRA PROPERTY MANAGEMENT INC.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, MNDC

### Introduction

This matter dealt with an application by the Tenant to cancel a Notice to End Tenancy for Cause and for compensation for loss or damage under the Act, regulation or tenancy agreement.

The Tenant said he served the Landlord with the Application and Notice of Hearing (the “hearing package”) by personal delivery on March 20, 2015. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant’s hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

At the start of the hearing the Tenant requested an adjournment because there are charges in court against him regarding damages to the Landlord’s property. The Tenant was told this hearing is focused on if the tenancy will continue and if the Tenant has a monetary claim against the Landlord; therefore the court issues are separate and unrelated to the issues in this hearing. The Arbitrator dismissed the Tenant’s request for an adjournment.

### Issues(s) to be Decided

1. Is the Tenant entitled to an order to cancel the Notice to End Tenancy?
2. Is there a loss or damage to the Tenant and if so how much?
3. Is the Tenant entitled to compensation for the loss or damage and if so how much?

### Background and Evidence

This tenancy started on March 24, 2014 as a month to month tenancy. Rent is \$375.00 per month payable in advance of the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$187.50 during the start of the tenancy.

The Landlord said he served the Tenant with a 1 Month Notice to End Tenancy for Cause dated March 10, 2015. He served the Notice on March 10, 2015 by posting the

Notice on the door of the Tenant's rental unit. The Effective Vacancy date on the Notice was April 30, 2015. The Tenant is living in the unit and the Landlord said they want to end the tenancy. The Landlord requested an Order of Possession for April 30, 2015 the effective vacancy date on the Notice to End Tenancy if the Tenant's application is unsuccessful.

The Landlord continued to say he issued the Notice to End Tenancy for the following reasons. The Tenant seriously jeopardized the health or safety of the Landlord's employees when the Tenant threw a bag of human excrement in the office of the Landlord. The Landlord said this offended his employees and it may have been dangerous to their health. The Tenant said he did not throw the bag of his urine in the office but he dropped it because he was frustrated with the Landlord and his agents. The Tenant said the urine incident resulted from a situation in the building that caused the water to be shut off. The Landlord told the tenants to use facilities at a neighbouring hotel managed by the Landlord and to use the café and pub washrooms in the rental complex. As well the Tenant said the Landlord provided plastic bag for the tenants to use if they had to. The Landlord said this was correct as there was a leak in the plumbing that took 2 days to repair. The Landlord continued to say he understood the Tenant was frustrated but that did not give the Tenant the right to throw a bag of urine into the office of the Landlord. The Tenant said he did not throw the bag it dropped. The Tenant was asked if he cleaned up the urine after the bag broke open. The Tenant said he did not clean the urine up he just left the office.

The second reason the Landlord said he issued the Notice to End Tenancy was because the Tenant caused damage to the rental complex. The Landlord said the Tenant put holes in the wall of the hallway by the women's toilet and the Tenant kick down a door and damaged it. The Landlord said he has included written and signed witness statements supporting his claim. The written witness statement states the witness/tenant saw the Tenant hit holes in the wall with a 2X4 piece of wood and threaten other tenants.

The Tenant said he did not threaten any other tenants and he did not damage the wall or put holes in the walls. The Tenant continued to say one of the Landlord's witness letters which was not signed has been recanted. The Tenant said he only received the letter withdrawing the Witness's remarks only a few days before the hearing so he sent the letter in as late evidence. The Landlord said he received the letter but it is not the letter he is relying on which says the Tenant threatened tenants and damaged the walls in the hall way. The Landlord said he submitted photographs of the damage to the walls and the door. The Tenant said he did not damage the walls or the door.

Further the Tenant said he has a monetary claim for \$50.00 for the inconvenience of the water shut of which he is withdrawing and a claim for \$32.86 for emergency water for the building during the time the water was shut off. The Tenant said he has provided a paid receipt for the cost of the water and he believes he should be able to recover these costs from the Landlord as the Landlord did not provide any emergency water during the time the water was shut off.

The Landlord said he did not provide any emergency water to the tenants in the building and he is not disputing the Tenant's claim, but he believes the Tenant's claim is higher than it should be for a few flats of bottled water.

In closing the Tenant said he did not want this to become a big issue, but he was very frustrated by the actions of the Landlord and his staff during the water shut off situation. The Tenant said he should not be evicted and he should be reimbursed for the cost of the water he purchased during the water shut off.

The Landlord said he believes he has provided evidence that supports the Notice to End Tenancy. The Landlord said the Tenant's actions of throwing a bag of urine into the office and damaging the walls and a door with a 2X4 plank is grounds to evict the Tenant.

### Analysis

It appears from the testimony at the hearing that communications between the Landlord and the Tenant has broken down. There was contradictory testimony provided by both the Tenant and the Landlord regarding the facts of the situation. Both parties agree the Tenant broke a bag of urine in the Landlord's office although both parties have differing views on how it was broken. I accept that the water shut off for 2 days was potentially a crisis situation, but it does not justify the Tenant throwing or dropping a bag of urine into the Landlord's office. As well the Tenant said he made no effort to clean up the urine after the bag broke. I accept the Landlord's testimony and evidence that the bag or urine incident did adversely affect the Landlord or his representatives and it may have been a health and safety issue as well.

Further I accept the Landlord's testimony, the Landlord's photographs and the Witness written and signed letter that the Tenant threatened and damaged the walls in the hall way by the women's toilet. The Tenant provide no evidence or witness testimony to support his testimony therefore; I find the Landlord has established grounds to prove the Tenant caused damage to the walls in the hall way and the door. Consequently, I dismiss the Tenant's application to cancel the Notice to End Tenancy dated March 10, 2015 and I award the Landlord with an Order of Possession with an effective vacancy date of April 30, 2015, the effective vacancy date on the Notice to End Tenancy.

Further I find the Landlord should have provided emergency water to all of the tenants in the building during the water shut off; therefore I find in favour of the Tenant's

monetary claim for \$32.86 so that the Tenant can recover the costs of the water he purchased during the water shut off.

### Conclusion

An Order of Possession effective April 30, 2015 at 1:00 p.m. has been issued to the Landlord. A copy of the Order must be served on the Tenant: the Order of Possession may be enforced in the Supreme Court of British Columbia.

A Monetary Order in the amount of \$32.86 has been issued to the Tenant. A copy of the Order must be served on the Landlord: the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia

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: April 29, 2015

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Residential Tenancy Branch

