



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: OPR, MNR, MND, MNDC, MNSD, FF; CNR, OLC

### Introduction

This hearing concerns 2 applications: i) by the landlord for an order of possession for unpaid rent or utilities / a monetary order as compensation for unpaid rent or utilities / compensation for damage to the unit, site or property / compensation for damage or loss under the Act, Regulation or tenancy agreement / retention of the security deposit / and recovery of the filing fee; ii) by the tenant for cancellation of a notice to end tenancy for unpaid rent or utilities / and an order instructing the landlord to comply with the Act, Regulation or tenancy agreement. Both parties attended and gave affirmed testimony.

### Preliminary Matter(s)

At the start of the hearing the tenant requested an adjournment. She stated that while she no longer occupies the unit, a number of events have transpired since her application was filed and, accordingly, she wished to update / amend her application. I determined, however, that the matters which are presently before me are not sufficiently impacted by events transpiring between the parties subsequent to the filing of their respective applications. The tenant's request was therefore declined, and the parties were informed of the option they have to file additional applications in future.

### Issue(s) to be Decided

Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement.

### Background and Evidence

The unit which is the subject of this dispute is located in the upstairs portion of a house. The landlord resides in the downstairs portion of the house.

Pursuant to a written tenancy agreement the 6 month fixed term of tenancy is from January 01 to June 30, 2015. The agreement provides that at the end of the fixed term the tenant must "move out of the residential unit." Monthly rent of \$1,400.00 is due and payable in advance on the 29<sup>th</sup> day of the month preceding the month for which rent is due, and a security deposit of \$700.00 was collected. Pursuant to an "addendum" to

the tenancy agreement, the tenant is responsible for paying 70% of the monthly hydro (electricity). During the hearing the parties testified that they also agreed to the tenant's 70% share of Fortis (gas). A move-in condition inspection report was not completed.

Arising from rent and utilities which remained unpaid when due on February 29 for March 2015, the landlord issued a 10 day notice to end tenancy for unpaid rent or utilities dated March 06, 2015. The notice was personally served on that same date. A copy of the notice was submitted in evidence. The date shown on the notice by when the tenant must vacate the unit is March 16, 2015. Subsequently, the tenant made no further payment toward either rent or utilities, and she testified that she vacated the unit "2 days ago." During the hearing the tenant provided her forwarding address.

The tenant filed an application for dispute resolution on March 05, 2015, while the landlord's application was filed on March 12, 2015.

### Analysis

The attention of the parties is drawn to the following particular sections of the Act:

Section 23: **Condition inspection: start of tenancy or new pet**

Section 24: **Consequences for tenant and landlord if report requirements not met**

Section 35: **Condition inspection: end of tenancy**

Section 36: **Consequences for tenant and landlord if report requirements not met**

Based on the affirmed testimony of the parties which was frequently conflicting, and on the documentary evidence which includes, but is not limited to, photographs, utility invoices as well as receipts, and in consideration of the relevant statutory provisions, the various aspects of the respective applications and my findings are set out below.

## **LANDLORD**

### *Order of possession*

I find that the tenant was served with a 10 day notice to end tenancy for unpaid rent or utilities dated March 06, 2015. While the tenant filed an application to dispute the notice, she made no further payment toward either rent or utilities, and she vacated the unit on or about April 07, 2015. Pursuant to section 46(5) of the Act I find that the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice. During the hearing the landlord stated that he still seeks an

order of possession, and based on all of the foregoing, I find that he has established entitlement to an **order of possession**.

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**\$1,400.00:** *unpaid rent for March 2015*

Following from the findings set out immediately above, I find that the landlord has established entitlement to the full amount of unpaid rent as claimed.

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**\$1,400.00:** *unpaid rent / loss of rental income for April 2015*

In consideration of the tenant's having vacated the unit on or about April 07, 2015, I find that the landlord has established entitlement to compensation reflecting unpaid rent / loss of rental income limited to **\$700.00**, for the period from April 01 to 14, 2015. The landlord's application for unpaid rent / loss of rental income for the period from April 15 to 30, 2015 is dismissed with leave to reapply.

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**\$154.30:** *Fortis (gas) for February 2015*

The tenant does not dispute this aspect of the claim, however, during the hearing the landlord reduced the amount sought by \$10.00, reflecting his withdrawal of the claim for internet. In the result, I find that the landlord has established entitlement to **\$144.30**.

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**\$49.00:** *Hydro (electricity) for February / March 2015*

I am unable to clearly determine from the utility invoice(s) submitted into evidence by the landlord, what portion of the hydro (electricity) utility the tenant may be responsible for paying with respect to the period in question. Accordingly, this aspect of the application is dismissed with leave to reapply.

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**\$20.00:** *Telus internet for February / March 2015*

During the hearing the landlord withdrew this aspect of his claim.

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**\$899.99:** *replacement cost for kitchen stove*

The landlord testified that the stove is approximately 3 years old, and that it has not been replaced since the tenant vacated. A photograph of the stove submitted into evidence by the landlord appears to show a ceramic stove top which is either marked and / or not completely clean. The landlord testified that he has not determined whether

or not the stove still functions. The tenant testified that there were marks on the stovetop when tenancy began. She also testified that the stove functions fully.

Further to the fact that no actual costs have been incurred, I find there is insufficient evidence that as a result of this tenancy the stove needs to be replaced. The parties are also informed of Residential Tenancy Policy Guideline # 40 which speaks to the "Useful Life of Building Elements," and provides that the useful life of a stove is 10 years. Following from all the foregoing, this aspect of the application is dismissed.

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*\$122.08: replacement cost for kitchen faucet*

The parties appear to agree that the landlord installed a new faucet on February 16, 2015. While the landlord claims that the new faucet has subsequently been removed by the tenant, the tenant claims that she did not remove the faucet. Related documentary evidence is limited to a receipt showing the cost of a faucet and photographs showing a kitchen sink without a faucet. In view of the conflicting testimony and in the absence of any conclusive evidence to support the landlord's claim that the tenant removed the faucet, I find that this aspect of the application must be dismissed.

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*\$330.21: estimated cost of driveway repairs (material / labour)*

The landlord claims that certain repairs to the driveway are required as a result of oil leaked onto it by the tenant's vehicle. The tenant disputes this claim and states that her car does not leak oil. The landlord testified that as he has not yet presently undertaken any driveway repairs, no actual costs have been incurred.

In view of the conflicting testimony on this matter, and in the absence of the comparative results of move-in and move-out condition inspection reports and / or comparative photographs, this aspect of the landlord's application must be dismissed.

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*\$14.46: cost of developing photographs*

Section 72 of the Act addresses **Director's orders: fees and monetary orders**. With the exception of the filing fee for an application for dispute resolution, the Act does not provide for the award of costs associated with litigation to either party to a dispute. Accordingly, this aspect of the application is hereby dismissed.

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*\$50.00: filing fee*

As the landlord has achieved a measure of success with the principal aspects of his application, I find that he has also established a claim to the full filing fee.

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**Sub-total entitlement: \$2,294.30**

I order that the landlord retain the tenant's security deposit of **\$700.00**, and I grant the landlord a **monetary order** for the balance owed of **\$1,594.30** (\$2,294.30 - \$700.00).

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## **TENANT**

As the tenant has now vacated the unit, her application for cancellation of the notice to end tenancy, and an order instructing the landlord to comply with the Act, Regulation or tenancy agreement, are both hereby dismissed.

## Conclusion

I hereby issue an **order of possession** in favour of the landlord effective not later than **two (2) days** after service on the tenant. This order must be served on the tenant. 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.

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$1,594.30**. Should it be necessary, this order may be served on the tenant, 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: April 13, 2015

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Residential Tenancy Branch

