



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: OPR, MNR, MND, MNSD, FF  
CNR, ERP, RP, AS, RR, FF

### Introduction

This hearing concerns 2 applications:

- i) by the landlord for an order of possession / a monetary order as compensation for unpaid rent / compensation for damage to the unit, site or property / retention of the security deposit / and recovery of the filing fee; and
- ii) by the tenant for cancellation of a notice to end tenancy / an order instructing the landlord to make emergency repairs for health or safety reasons / an order instructing the landlord to make repairs to the unit, site or property / permission for the tenant to assign or sublet the unit because the landlord's permission has been unreasonably withheld / permission to reduce rent for repairs, services or facilities agreed upon but not provided / and recovery of the filing fee.

Both parties attended and gave affirmed testimony.

### 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

Pursuant to a written tenancy agreement, a copy of which is not in evidence, the tenancy began on August 01, 2014. Monthly rent of \$2,600.00 is due and payable in advance on the first day of each month, and a security deposit of \$1,300.00 was collected.

Arising from rent which was unpaid for May in the amount of \$2,600.00, the landlord issued a 10 day notice to end tenancy for unpaid rent. Evidence before me includes a

copy of the notice dated May 28, 2015 and a copy of the notice dated May 29, 2015. There appears to be no dispute, however, that the notice was served by way of posting to the unit door on May 29, 2015. The tenant filed an application to dispute the notice on June 05, 2015 and he still resides in the unit. However, no rent has been paid for May, June or July 2015.

The tenant claims that after his wife moved out of the unit at the end of April 2015, he was unable to find another renter to move in and share the rent, as the unit was variously in a state of disrepair. The tenant also claims that over time he has made repairs / upgrades to the unit and that this should entitle him to a reduction in rent. Despite his claims, however, evidence submitted by the tenant is limited to his application; there is no other evidence before me such as receipts, photographs, related correspondence and / or documentation for example, to support his claims.

For his part, the landlord disputes the tenant's claims that any agreements were made for repairs / upgrades to be made to the unit by the tenant. Further, the landlord takes the position that any repairs required were consistently attended to by the landlord in a timely manner. The landlord's application was filed on June 09, 2015.

### Analysis

Based on the documentary evidence and testimony, I find that the tenant was served with a 10 day notice to end tenancy for unpaid rent dated May 29, 2015. As the notice was served by posting to the unit door on May 29, 2015, pursuant to section 90 of the Act which addresses **When documents are considered to have been received**, I find that the notice was received 3 days later on June 01, 2015. The tenant filed an application to dispute the notice on June 05, 2015, which is within the 5 day period available for doing after receiving the notice, pursuant to section 46 of the Act which addresses **Landlord's notice: non-payment of rent**. But no more rent has been paid.

Section 26 of the Act addresses **Rules about payment and non-payment of rent**, in part as follows:

26(1) 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.

I find that the tenant has failed to meet the burden of proving that he has a right under this Act to deduct all or a portion of the rent. Following from all of the foregoing, I find

that the tenant's application must be dismissed in its entirety, and I find that the landlord has established entitlement to an **order of possession**.

As to compensation, I find that the landlord has established a claim of **\$7,900.00**:

\$2,600.00: *unpaid rent for May*  
\$2,600.00: *unpaid rent for June*  
\$2,600.00: *unpaid rent for July*  
\$100.00: *filing fee*

I order that the landlord retain the security deposit of **\$1,300.00**, and I grant the landlord a **monetary order** for the balance owed of **\$6,600.00** (\$7,900.00 - \$1,300.00).

### Conclusion

The tenant's application is hereby dismissed in its entirety.

I hereby issue an **order of possession** in favour of the landlord effective not later than **1:00 P.M., Friday, July 31, 2015**. 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 **\$6,600.00**. 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: July 27, 2015

---

Residential Tenancy Branch

