



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: MNR OPR RR MNDC MNSD FF

### **Introduction:**

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) A monetary order pursuant to Sections 46 and 67 for unpaid rent;
- b) An Order of Possession pursuant to sections 46 and 55;
- c) An Order to retain the security deposit pursuant to Section 38; and
- d) An order to recover the filing fee pursuant to Section 72.

This hearing also dealt with an application by the tenant pursuant to the Residential Tenancy Act (the Act) for orders as follows:

- e) To cancel a Notice to End Tenancy for unpaid rent and a Notice to End Tenancy for cause;
- f) An Order that the landlord comply with the Act;
- g) An Order that the landlord allow access to the property for the tenant and guests;
- h) A monetary order or rent rebate; and
- i) An Order of Possession for the tenant.

### SERVICE

Both parties attended the hearing and each confirmed receipt of the Notices to End Tenancy dated August 17, 2015 (unpaid rent ) and August 4, 2015(for cause) and of each other's Application for Dispute Resolution. I find the documents were legally served pursuant to sections 88 and 89 of the Act for the purposes of this hearing.

### **Issue(s) to be Decided:**

Has the landlord proved on the balance of probabilities that rent is owed and they are entitled to an Order of Possession and a monetary order for rental arrears and to recover the filing fee for this application?

Or is the tenant entitled to any relief? Has the tenant proved on a balance of probabilities that they are entitled to compensation and to have Orders compelling the landlord to obey the Act and allow access to tenant and guests?

### **Background and Evidence:**

Both parties attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. It is undisputed that the tenancy commenced September 3, 2011, that rent is \$700 a month and a security deposit of \$350 was paid. It is undisputed that the tenant has not paid rent for August, September or October 2015 but he disputes that he owes a further \$150 from January 2015. He said he believed he paid \$100 in cash to the landlord's father in late June or early July and this was not accounted for. He agrees he has not paid rent for August, September or October 2015.

The landlord read his rent ledger on the telephone showing a sequence of partial and late payments from June 2014. He said \$350 was owed from January 2015 and the tenant paid \$100 of this in April and \$100 in June 2015 and promised to pay a third \$100 in cash but never did. He said the tenant had always paid by cheques or bank drafts before so these acted as his receipts. The landlord said he would accept October 25, 2015 as an effective date for the Order of Possession.

The tenant noted he had tried to file a dispute to both Notices to End Tenancy but there was a mix up between the Service BC Office and the Residential Tenancy Office. On the tenant's application, he requests \$850 compensation. He said this was because he did not have access to his parking space which is included in his tenancy agreement because the landlord parked vehicles behind his car; he said he had told them they could do this when he was not using his car but now he would like it back. He also said his Wi-Fi has been disconnected for over a month and his TV was disconnected. He said there has been a significant noise problem from the landlord's unit. In the past he resolved the vacuum noises and sewing machine noises late at night but there has been loud stomping noises every day since June 2015. The landlord said the tenant had problems with his vehicle and license and there was Police involvement; his car is not insured, he has it parked in his allotted spot but it can't be moved so they have parked in front of it. Regarding the Wi-Fi, the landlord said that it is not included in the lease agreement but he had provided it as a courtesy. He said the tenant only told him a few days ago there was a problem. He believes the August storm may have caused a disruption and it needs resetting after such instances but he was not informed. Again, the landlord pointed out that provision of television service is not in the tenancy agreement and he does not need it himself. However, he had provided it as a courtesy but when the tenant told him he was leaving at the end of September, he discontinued the service as he does not use it himself. The tenant said he had planned to move but the new landlord could not get the place ready in time for him.

In respect to the stomping noises, the landlord said that he has two children, five and three years old and the five year old jumps from the couch to the floor quite often. He agrees that she has become noisier but it is hard to control young children as she is only doing her natural physical activities. He does his best.

In evidence are two Notices to End Tenancy, one for unpaid rent and one for cause, signed proof of service and the tenancy agreement.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

**Analysis:**

**Order of Possession**

I find that the landlord is entitled to an Order of Possession. There is outstanding rent. Although the Tenant made application pursuant to Section 46 to set aside the Notice to End a Residential Tenancy and there was a problem with the filing, I find the tenant has provided no valid reasons why the Notice to End Tenancy for unpaid rent should be set aside. Section 26 of the Act provides that a tenant must pay rent when due, whether or not the landlord is fulfilling his obligations under the Act. I find the landlord entitled to an Order of Possession effective October 25, 2015 as agreed in the hearing.

I find it moot to consider whether or not the Notice to End Tenancy for the cause of repeated late payment of rent should be set aside as the landlord has been successful in obtaining the Order of Possession pursuant to the 10 day Notice for unpaid rent. Furthermore, I find the landlord's record of rent payments to be reliable and the weight of the evidence is that the tenant was repeatedly late in paying rent since he began making partial payments in 2014.

**Monetary Orders:**

The onus is on each applicant to prove on a balance of probabilities their claim. I find the landlord has met the onus of proving that the tenant owes \$2250 in rental arrears and loss. The tenant did not dispute that he owes \$2100 of this for August to October 2015 but he said he believed he paid \$100 in cash of the remaining \$150 owed for January 2015. I prefer the evidence of the landlord that he never paid this \$100 although he promised to do it as the landlord was able to supply times and amounts paid from his ledger and the tenant was unable to supply a firm date of payment and he said he had no receipt or record of it, although he had paid by bank draft in the past.

On the tenant's application, the onus is on him to prove on the balance of probabilities that he is entitled to compensation for the items claimed. I find provision of Wi-Fi and cable TV is not included in his tenancy agreement so I find him not entitled to compensation for lack of a service which was only provided as a courtesy. In respect to parking, I find he is entitled to one parking space as noted in his tenancy agreement. However, I find he has his car parked in the allotted space but it is not licensed and to the landlord's knowledge, he is not allowed to drive it so I find it is not unreasonable or restrictive for the landlord to park behind or in front of the car that can't be used. Although the tenant said his daughter might have needed to use it, I find insufficient evidence that he notified the landlord of the change of circumstances or requested that access to his car be left clear. I find him not entitled to compensation in respect to the parking area.

Section 28 of the Act of the Act notes that a tenant has a right to quiet enjoyment of his unit and (b) freedom from unreasonable disturbance. I find the weight of the evidence is that the noise from the landlord's unit overhead has been unreasonably disturbing to the tenant since June

2015. Although running and jumping from a couch might be natural activities for three and five year old children, I find the landlord has a primary duty under the Act to protect the quiet enjoyment of tenants to whom he rents a basement unit and this was not done. I find the tenant entitled to a rebate of rent of \$50 a month from June to October for the unreasonable disturbance of his peaceful enjoyment (total of 5x \$50 =\$300).

**Conclusion:**

I dismiss the application of the tenant to set aside the Notices to End Tenancy but I find him entitled to a rent rebate of \$300 for unreasonable disturbance of his peaceful enjoyment. The rebate will be deducted in the calculation below. He paid no filing fee so none is awarded.

I find the landlord entitled to an Order of Possession effective October 25, 2015 and a monetary order as calculated below. I find him entitled to recover filing fees and to retain the security deposit to offset the amount owing.

Calculation of Monetary Award:

Rental arrears and loss	2250.00
Filing fee	50.00
Less rent rebate to tenant	-300.00
Less security deposit (no interest 2011-15)	-350.00
Total Monetary Order to Landlord	1650.00

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: October 14, 2015

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Residential Tenancy Branch

