



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Vancouver Eviction Services  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute codes      OP MNR MNSD FF

### Introduction

This hearing dealt with (a) an application by the landlord for an order of possession, a monetary order and an order allowing retention of the security deposit in partial satisfaction of the claim; and (b) an application by the tenant for an order setting aside the landlord's Notice to End Tenancy dated August 27, 2015 and an order that the landlord make repairs. The hearing was conducted by conference call. Both parties attended the hearing and had an opportunity to be heard.

### Issues

Are the parties entitled to the requested orders?

### Background and Evidence

This tenancy began on May 1, 2015. The rent is \$1575.00 due in advance on the first day of each month. The tenant paid a security deposit of \$787.50 at the start of the tenancy. The tenant did not pay rent for August when it was due. On August 26, 2015 the landlord served the tenant in person with a Notice to End Tenancy for non-payment of rent. The tenant filed an application disputing the landlord's Notice on August 31, 2015. The tenant has not paid any rent for August, September or October.

The tenant acknowledged that she has not paid rent for the months of August, September and October but says she decided to withhold rent to "get the landlord's attention" with respect to some maintenance issues in her rental unit and with respect to the fact that she still did not have a copy of the tenancy agreement. The main problem the tenant spoke of in the unit is that there is no hot water in the bathroom sink.

### Analysis

#### Order of Possession & Request to Cancel Notice

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. In the present case, the tenant did dispute the Notice but did not pay any rent. The tenant claims she refused to pay the rent in order to get the landlord's attention to certain complaints she had. However, as I advised the tenant at the hearing, the matters she was concerned about did not give her the right to withhold rent. The appropriate course of action for the tenant would have been to file an application for dispute resolution requesting repairs and a copy of the tenancy agreement. **As a result, I find that the tenant is not entitled to an order setting aside the Notice to End Tenancy and that the landlord is entitled to an order of possession for non-payment of rent.**

#### Monetary Order

The landlord has requested a monetary order for the following:

August rent	\$1575.00
September rent	\$1575.00
October rent	\$1575.00
November loss of income	\$1575.00
TOTAL	\$6300.00

With respect to the claim for unpaid rent for the months of August, September and October I am satisfied that the landlord has established these claims. As for the landlord's claim for lost revenue for November, I refer to Residential Tenancy Policy Guideline No. 3 which states as follows with respect to this very type of claim:

*In a month to month tenancy, if the tenancy is ended by the landlord for non-payment of rent, the landlord may recover any loss of rent suffered for the next month as a notice given by the tenant during the month would not end the tenancy until the end of the subsequent month.*

In the present case, the tenant has not given 1 month notice to the landlord that she is going to vacate the rental unit which would have allowed the landlord to begin

advertising the unit. As a result, I find the landlord is entitled to recover his lost revenue for the month of November.

### Repairs

Because the tenancy is coming to an end, the tenant's request for repairs is hereby dismissed. I note as well that the tenant did not submit any documentary evidence in support of her claim for repairs.

### Conclusion

*Order of Possession* - Based on the above background, evidence and analysis I find that the landlord is entitled to an order of possession effective two days after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

*Monetary Order and Security Deposit* - I find that the landlord has established a total monetary claim of \$6300.00 for the outstanding rent for August, September and October and loss of revenue for November. The landlord is entitled to recover the \$50.00 filing fee for this application for a total award of \$6350.00. I order that the landlord retain the deposit and interest (\$0.00) of \$787.50 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$5562.50. This order may be 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: October 30, 2015

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Residential Tenancy Branch

