



# 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, MNDC, OLC, RP, RR

### Introduction

This hearing was scheduled in response to 2 applications:

- i) by the landlord for an order of possession for unpaid rent / a monetary order as compensation for unpaid rent / 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 pet damage deposit / and recovery of the filing fee; and
- ii) by the tenant for cancellation of a notice to end tenancy for unpaid rent / a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / an order instructing the landlord to comply with the Act, Regulation or tenancy agreement / an order instructing the landlord to make repairs to the unit, site or property / and permission to reduce rent for repairs, services or facilities agreed upon but not provided.

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 the fixed term of tenancy is from August 01, 2014 to July 31, 2015. The agreement provides that at the end of the fixed term "the tenancy may continue on a month-to-month basis or another fixed length of time." Monthly rent of \$2,150.00 is due and payable in advance on the first day of each month. The tenancy agreement documents that a security deposit of \$2,150.00 and a pet damage deposit of \$300.00 were collected.

Pursuant to section 46 of the Act which addresses **Landlord's notice: non-payment of rent**, arising from rent of \$2,150.00 which was unpaid when due on August 01, 2015, the landlord issued a 10 day notice to end tenancy for unpaid rent dated August 13, 2015. The notice was served by way of posting to the unit door 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 August 26, 2015. Subsequently, while the tenant filed an application to dispute the notice on August 17, 2015, he has made no further payment toward rent and he continues to reside in the unit.

Further to a claim which includes unpaid rent, the landlord seeks to recover a total of \$600.00 (3 x \$200.00) for fines assessed by the strata for 3 separate bylaw infractions:

Bylaw Infraction Fine – Damage to Common Property (Elevators)

Bylaw Infraction Fine – Noise

Bylaw Infraction Fine – Damage to Common Property (Spitting)

Documentary evidence in support of this aspect of the claim is limited to a “statement of account” dated July 29, 2015, which was sent to the landlord on behalf of the strata. While the tenant denies responsibility for either of the 2 fines assessed for damage to common property, he acknowledges responsibility for the fine assessed for noise.

As to compensation sought by the tenant, he claims \$277.00 for emergency repairs related to the washing machine, and \$423.00 related to repairs he claims to have undertaken with regard to the bathroom sink.

As noted above, the tenant's application for dispute resolution was filed on August 17, 2015. The landlord's application was filed on August 24, 2015.

### Analysis

Further to the application itself, there is no documentary evidence before me from the tenant. Documentary evidence before me is therefore comprised principally of documents submitted by the landlord.

Based on the documentary evidence and the affirmed testimony of the landlord's agent (the “landlord”) and the tenant, the various aspects of the respective applications and my related findings are set out below.

### **LANDLORD**

I find that the tenant was served with a 10 day notice to end tenancy for unpaid rent dated August 13, 2015. While the tenant filed an application to dispute the notice on August 17, 2015, the tenant did not pay the outstanding rent within 5 days of receiving the notice. Section 26 of the Act addresses **Rules about payment and non-payment of rent**, in part:

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.

In the absence of any evidence that the tenant had a right under the Act to deduct all or a portion of the rent, following from all of the above, 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 **\$6,750.00**:

\$2,150.00: *unpaid rent for August*

\$2,150.00: *unpaid rent for September*

\$2,150.00: *unpaid rent for October*

\$200.00: *fine assessed by strata bylaw infraction related to noise*

\$100.00: *filing fee*

I order that the landlord retain the security deposit of \$2,150.00 and the pet damage deposit of \$300.00 [**total: \$2,450.00**], and I grant the landlord a **monetary order** for the balance owed of **\$4,300.00** (\$6,750.00 - \$2,450.00).

In the absence of sufficient evidence, the landlord's application to recover \$400.00 arising from 2 fines assessed by strata for bylaw infractions related to damage to common property, is hereby dismissed.

## **TENANT**

As I have found that the landlord has established entitlement to an order of possession on the basis of unpaid rent, the tenant's application for cancellation of a notice to end tenancy for unpaid rent is hereby dismissed.

As earlier noted, there is no documentary evidence before me from the tenant which is further to the application itself. In the result, the aspect of the tenant's application concerning compensation (\$277.00 + \$423.00) is hereby dismissed.

In the absence of sufficient documentary evidence, and in light of the imminent end of tenancy, the tenant's application for certain orders to be issued against the landlord, in addition to permission to reduce rent, are also hereby dismissed.

As the tenant has not succeeded with the principal aspects of his application, the application to recover the filing fee must also be dismissed.

### 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 **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 **\$4,300.00**. 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: October 28, 2015

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Residential Tenancy Branch

