



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding VANCOUVER EVICTIONS SERVICES  
and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes:**

Landlord	OPR, MNR, MNDC, FF
Tenant	ERP, RP, RR, LAT, AS, FF

### **Introduction**

This hearing was convened in response to cross applications by the tenant and the landlord. The tenant's hearing of January 06, 2016 was reconvened to join the landlord's application. The tenant filed pursuant to the *Residential Tenancy Act* (the Act) on November 10, 2015 for Orders as follows:

1. A Monetary Order for compensation of cost of emergency repairs - Section 67
2. Allow the tenant to reduce rent for repairs - Section 65
3. Make emergency repairs - Section 33
4. Make repairs to the unit – Section 62
5. Authorize tenant to change locks- Section 65
6. An Order to recover the filing fee for this application - Section 72

The landlord filed pursuant to the Act on November 24, 2015 for Orders as follows:

1. An Order of Possession for unpaid rent - Section 55
2. A Monetary Order for unpaid rent - Section 67
3. A Monetary Order for loss - Section 67
4. An Order to recover the filing fee for this application - Section 72

Neither the landlord nor the tenant appeared in the conference call hearing. Both parties were represented in the hearing by respective agents and each participated with their submissions and testimony.

Both parties acknowledged receiving the Application and Notice of Hearing package of the other.

Both parties denied receiving the *evidence* of the other. Each provided proof of registered mail for their evidence to the other in accordance with the Act and both parties provided this hearing with their respective evidence. However, both parties denied they received the evidence of the other and neither party had the evidence before them. Despite the contrasting testimony I found both parties provided proof they served their evidence in accordance with the Act. I accepted the parties' evidence before me.

As preliminary, at the outset of this hearing the tenant advised they still reside in the rental unit but have found alternate accommodations and will vacate January 31, 2016. The parties agreed the tenancy will end January 31, 2016 and the landlord to receive an **Order of Possession** effective on the agreed date of **January 31, 2016**.

The hearing proceeded on the balance of the claims.

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

Is the tenant entitled to the monetary amount claimed?  
Is the landlord entitled to the monetary amount claimed?  
Is the tenant entitled to reduce rent for repairs?  
Should the landlord be Ordered to make repairs?  
Should the landlord be Ordered to make emergency repairs?  
Should the tenant be authorized to change locks?

### **Background and Evidence**

The rental unit is the subject of a written tenancy agreement between the landlord and tenant. The tenancy started October 11, 2015. Rent in the amount of \$2350.00 is payable by the tenant in advance on the eleventh (11<sup>th</sup>) day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the

amount of \$1175.00, which the landlord still holds in trust and for which the tenant provided a receipt.

*Landlord's application*

The landlord testified that on November 08, 2015 they sent the tenant a 10 Day Notice to End tenancy for unpaid rent dated November 07, 2015 provided into evidence. The Notice states the tenant owed rent of \$2350.00 on October 11, 2015 – for the first month of occupancy. The tenant denies receiving the notice, and therefore did not dispute the notice, despite the Canada Post tracking information stating it was delivered and received by an 'A DUD'. The tenant testified they paid the claimed rent, but did not provide a receipt. The landlord's agent, SA, testified the tenant did not pay the first month's rent; however, landlord agent, JF, testified the tenant paid \$800.00 and then \$325.00, but did not provide a receipt.

The landlord testified the tenant did not pay the rent for November 2015. The tenant testified they did pay November 2015 rent and provided a receipt for the full amount of rent issued by the named landlord of this matter - not in attendance. The landlord's representative testified the landlord may have issued the receipt however the cheque was returned as not negotiable as the account had been closed. All of which the tenant disagreed. The landlord indicated they had provided proof from the financial institution. Upon inspection the landlord's evidence was of poor quality and in no way decipherable.

The landlord testified the tenant did not pay the rent for December 2015. Again, in contrast, the tenant testified they did pay December 2015 rent and provided a receipt for December 2015 rent issued by the named landlord of this matter - not in attendance. The landlord's representative confirmed the landlord issued the receipt, but that the rent was unpaid.

*Tenant's application*

In addition to rent receipts the tenant provided digital evidence of 5 photographs

claimed to be of deficiencies in the rental unit with an ancillary claim of expenses for emergency repairs in the amount of \$833.87. However, the tenant did not provide evidence of costs they claimed to have incurred.

### **Analysis**

The parties agreed in respect to the tenancy's end and the landlord is given an Order of Possession effective **January 31, 2016**.

The parties clearly were disadvantaged by the absence of the other's evidence. I make no determination of whether the parties received the evidence of the other. None the less, having accepted the parties' evidence as provided in concert with the Act, and upon confirmation of all the evidence being before me, I find as follows.

#### *Tenant's claim*

I find the tenant did not provided evidence to support they paid for emergency repairs and for which they should be compensated. As a result, I **dismiss** this portion of the tenant's claim.

As the tenancy is soon coming to an end I declined to consider the remainder of the tenant's claims as they pertain to a surviving tenancy. Effectively, the balance of the tenant's claims is **dismissed**.

#### *Landlord's claim*

I accept the landlord is in possession of evidence which due to technology considerations was not available to me, and which in its absence may unfairly prejudice the landlord in the landlord's quest for a monetary order. As a result, I **dismiss** the landlord's monetary claim, but I do so *with leave to reapply*. In that event, it must be noted the landlord should endeavour to provide evidence which, in the least, is readable.

**Conclusion**

The tenant's application is **dismissed**.

The landlord's monetary claim is **dismissed**, *with leave to reapply*.

As agreed by the parties, **I grant** an Order of Possession to the landlord **effective January 31, 2016**. The tenant must be served with this Order of Possession. 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.

**This Decision is final and binding on both parties.**

*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: January 19, 2016

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Residential Tenancy Branch

