



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF

### Introduction

The Application for Dispute Resolution filed by the landlord makes the following claims:

- a. An Order for Possession for non-payment of rent
- b. A monetary order for unpaid rent in the sum of \$3550.
- c. An Order to retain the security deposit.
- d. An order to recover the cost of the filing fee

A hearing was conducted by conference call in the presence of the applicant and in the absence of the respondent although duly served. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

I find that the 10 day Notice to End Tenancy was personally served on the Tenant on November 30, 2015. Further I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the Tenant on December 14, 2015.

### Preliminary Matter:

At the hearing the landlord made a revised claim of \$6249.40 which included loss of rent for January 2016, the cost of cleaning, disposal of garbage and repairs. He testified he provided the Residential Tenancy Branch with copies of the materials on or about January 13, 2016 and he served an Amended Application for Dispute Resolution and the evidence in support on the tenant on January 18, 2016. .

Rule 4.1 of the Rules of Procedure includes the following:

## **Rule 4 – Amending an Application for Dispute Resolution**

### **4.1 Amending an Application for Dispute Resolution**

An applicant may amend a claim by:

- completing an Amendment to an Application for Dispute Resolution form; and

- filing the completed Amendment to an Application for Dispute Resolution form and supporting evidence with the Residential Tenancy Branch directly or through a Service BC office.

An amendment may add to, alter or remove claims made in the original application.

As stated in Rule 2.3 [*Related issues*], unrelated claims contained in an application may be dismissed with or without leave to reapply.

#### **4.2 Amending an application at the hearing**

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

At the time I heard this matter I had a digital version of the file but not the hard copy. The digital version did not show that the landlord had amended the Application for Dispute Resolution. The landlord stated he believed that he had amended it. I waited before writing my decision and now have the hard copy of the file. It discloses that while the landlord provided the Branch with a revised claim including evidence, the landlord did not file an Amendment to his Application for Dispute Resolution. I determined that while I can hear his claim for loss of rent (including loss of rent for January 2016 as this claim can be included under Rule 4.2) as loss of rent is part of the original application, it is not proper to hear the landlord's claim for the cost of cleaning, disposal of garbage and repairs as it is not part of any claim.. The landlord retains the right to file a new Application for Dispute Resolution making these claims.

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

The issues to be decided are as follows:

- a. Whether the landlord is entitled to an Order for Possession?
- b. Whether the landlord is entitled to A Monetary Order and if so how much?
- c. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- d. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence

The tenant originally rented the entire house along with other people. However, in 2015 he and a co tenant rented the upstairs portion of the house for \$1700 per month payable on the last day of each the preceding month. The tenants paid a security deposit of \$850. However, \$500 of that sum was returned to the co-tenant when she vacated the rental unit. The landlord presently holds a deposit of \$350.

The tenant failed to pay the rent for November (\$1000 remains owing) and December \$1700 remains owing. He vacated the rental unit on January 1, 2016. However, the Tenant failed to clean the rental unit and the tenants who were to move in on January 1, 2016 delayed their possession date by one month because of the poor condition of the rental unit. The landlord lost rent in the sum of \$1700 for January 2016.

Analysis - Order of Possession:

It is no longer necessary to consider the landlord's application for an Order for Possession as the landlord has regained possession.

Analysis - Monetary Order and Cost of Filing fee:

With respect to each of the landlord's claims I find as follows:

- a. I determined that the landlord is entitled to \$2700 for non-payment of rent for November 2015 (\$1000 is owed) and December 2015 (\$1700) is owed and the sum of \$2700 is outstanding.
- b. I determined the landlord to \$1700 for loss of rent for January 2016. I am satisfied based on all of the evidence submitted that the tenant failed to properly clean the rental unit and the landlord lost rent for the month of January 2016 as a result.

In summary I determined the landlord has established a claim against the tenant in the sum of \$4400 plus \$50 for the cost of the filing fee for a total of \$4450

Security Deposit:

I determined the security deposit plus interest totals the sum of \$350. I ordered the landlord may retain this sum thus reducing the amount outstanding under this monetary order to the sum of \$4100.

Conclusion

In summary I ordered that the landlord shall retain the security deposit of \$350. I further ordered that the Tenant pay to the Landlord the sum of \$4100.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial 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: February 04, 2016

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Residential Tenancy Branch

