



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, OPC, MNR, MNDC, MNSD, FF;    CNC, CNR, MNDC, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an Order of Possession for unpaid rent and for cause, pursuant to section 55;
- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72.

This hearing also dealt with the tenant's cross-application pursuant to the *Act* for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause, dated December 16, 2015 ("1 Month Notice"), pursuant to section 47;
- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated December 23, 2015 ("10 Day Notice"), pursuant to section 46;
- a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement, pursuant to section 67;
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. This hearing lasted approximately 51 minutes in order to allow both parties to fully negotiate a settlement of their claims.

Both parties confirmed receipt of the other party's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that both parties were duly served with the other party's application.

The landlord testified that she received one of two total pages of the tenant's amendment to his application, disputing the landlord's 10 Day Notice. The landlord confirmed that she was missing the information page regarding how to file an amendment. However, the landlord testified that she had notice of the tenant's amendment and was prepared to proceed with this hearing on the basis of the above amendment. Therefore, I proceeded with this hearing and the tenant's amendment on the basis of the landlord's consent.

### Issues to be Decided

Should the landlord's 1 Month Notice and/or 10 Day Notice be cancelled? If not, is the landlord entitled to an order of possession?

Is either party entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to retain the tenant's security deposit in partial satisfaction of the monetary order requested?

Is either party entitled to recover the filing fee paid for their application?

### Background and Evidence

Both parties agreed that this tenancy began on February 21, 2015 and is for a fixed term to end on February 29, 2016, after which the tenant is required to vacate the rental unit. Both parties agreed that monthly rent in the amount of \$4,500.00 is payable on the first day of each month. Both parties agreed that the tenant paid a security deposit of \$2,250.00 and the landlord continues to retain this deposit. The tenant confirmed that he continues to reside in the rental unit. A copy of the written tenancy agreement was provided for this hearing.

The landlord issued the 1 Month Notice, which has an effective move-out date of January 31, 2016, to the tenant for the following reason: *Tenant is repeatedly late paying rent.* The landlord issued the 10 Day Notice, which has an effective move-out date of January 2, 2016, for failure to pay rent of \$4,500.00 due on December 1, 2015. The landlord sought an order of possession based on the 1 Month and 10 Day Notices. The landlord also sought a monetary order of \$13,800.00 for unpaid rent, late fees and NSF fees from December 2015 to February 2016. The tenant agreed that he owed unpaid rent of \$4,500.00 and late fees of \$25.00 for each month from December 2015 to February 2016. The landlord also sought to recover the \$100.00 filing fee paid for her application.

The tenant sought to cancel both of the landlord's 1 Month and 10 Day Notices. The tenant also sought to recover \$700.00 in late rent fees paid to the landlord in September and October 2015, which the landlord confirmed that she received. The tenant stated that he made an error in applying for \$650.00, when the actual amount was \$700.00. The tenant also sought to recover the \$50.00 filing fee paid for his application.

### Analysis

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

Both parties agreed to the following final and binding settlement of all issues currently under dispute at this time:

1. Both parties agreed that this tenancy will end by 1:00 p.m. on February 22, 2016, by which time the tenant and any other occupants will have vacated the rental unit;
2. Both parties agreed that the landlord will retain the tenant's entire security deposit of \$2,250.00;
  - a. The landlord testified that she agreed to and understood the consequences of retaining the tenant's security deposit prior to the end of this tenancy;
3. Both parties agreed that the tenant will pay the landlord, by way of bank drafts, \$10,625.00 total for rent, late payments and NSF fees for this entire tenancy until February 22, 2016, according to the following payment plan:
  - a. \$6,000.00 by February 19, 2016; and

- b. \$4,625.00 by March 25, 2016;
- 4. Both parties agreed to bear their own costs for the filing fees paid for their applications;
- 5. Both parties agreed that the landlord's 1 Month Notice, dated December 16, 2015, and the landlord's 10 Day Notice, dated December 23, 2015, are both cancelled and of no force or effect; and
- 6. Both parties agreed that this settlement agreement constitutes a final and binding resolution of both parties' applications at this hearing.

These particulars comprise the full and final settlement of all aspects of this dispute for both parties. Both parties testified at the hearing that they understood and agreed to the above terms, free of any duress or coercion. Both parties testified that they understood and agreed that the above terms are legal, final and binding and enforceable, which settle all aspects of this dispute.

### Conclusion

To give effect to the settlement reached between the parties and as advised to both parties during the hearing, I issue the attached Order of Possession to be used by the landlord **only** if the tenant and any other occupants fail to vacate the rental premises by 1:00 p.m. on February 22, 2016. The landlord is provided with this Order in the above terms and the tenant must be served with this Order in the event that the tenant and any other occupants fail to vacate the rental premises by 1:00 p.m. on February 22, 2016. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The landlord's 1 Month Notice, dated December 16, 2015, and the landlord's 10 Day Notice, dated December 23, 2015, are both cancelled and of no force or effect.

In order to implement the above settlement reached between the parties, and as advised to both parties during the hearing, I issue a monetary Order in the landlord's favour in the amount of \$10,625.00. I deliver this Order to the landlord in support of the above agreement for use **only** in the event that the tenant does not abide by condition #3 of the above agreement. The landlord is provided with this Order in the above terms and the tenant must be served with a copy of this Order as soon as possible after the tenant does not abide by condition #3 of the above agreement. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

In order to implement the above settlement agreement, I order the landlord to retain the tenant's entire security deposit of \$2,250.00.

Both parties must bear the cost of their own filing fees paid for their applications.

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 09, 2016

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Residential Tenancy Branch

