



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes                      CNC, OPC, MND & FF

### Introduction

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

- a. An order to cancel the one month Notice to End Tenancy dated January 21, 2016
- b. A monetary order in the sum of \$3200
- c. An order disputing a Rent Increase that is to take effect on March 1, 2016.
- d. An order that the tenant recover the cost of the filing fee

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

- a. An Order for Possession for cause
- b. A monetary order in the sum of \$1066.80 for damage to the rental unit.
- c. An order to recover the cost of the filing fee

A hearing was conducted by conference call in the presence of representatives of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the one month Notice to End Tenancy was personally served on an adult person who resides with the Tenant on January 21, 2016. Further I find that the Application for Dispute Resolution/Notice of Hearing filed by each party was sufficiently served on the other. With respect to each of the applicant's claims I find as follows:

### Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the 10 day Notice to End Tenancy dated January 21, 2016?
- b. Whether the tenant is entitled to a monetary order and if so how much?

- c. Whether the Tenant is entitled to an order disputing a Rent Increase that is to take effect on March 1, 2016
- d. Whether the tenant is entitled to recover the cost of the filing fee?
- e. Whether the landlord is entitled to an Order for Possession?
- f. Whether the landlord is entitled to A Monetary Order and if so how much?
- g. Whether the landlord is entitled to recover the cost of the filing fee?

#### Background and Evidence

The parties entered into a one year fixed term written tenancy agreement that provided that the tenancy would start on December 15, 2014, continue for one year and become month to month after that. The rent is \$1600 per month payable on the first day of each month. The tenant paid a security deposit of \$800 on November 24, 2014.

The solicitor for the tenant testified the tenant has advised him that, in the September 2015, the tenant and the agent for the landlord agreed that the rent increase would not start until August 1, 2016. Despite this agreement the landlord served a Notice of Increase that provides that the rent is to be increased to \$1646.40 starting on March 1, 2016.

On December 24, 2015 the landlord received a call from the Strata Corporation advising that water was leaking from the tenant's unit and damaging property below. The landlord was not able to contact the tenant. Eventually the landlord gained access and discovered the garburator had been disconnected and water was leaking from under the kitchen sink. The tenant failed to advise the landlord of this problem. The landlord produced a bill from the Strata Corporation in the sum of \$495.60 for the emergency call out.

The tenant was in the process of repairing it when the landlord stopped him saying that it must be repaired by a repairperson hired by the landlord. The landlord produced an invoice in the sum of \$571.20 for the repair of the garburator and the unclogging of the bathtub.

The landlord also claimed two \$50 fines levied by the Strata Corporation for improper parking.

The rent was paid for February and March. The landlord has accepted the payments unconditionally. The landlord agreed the tenant can continue to live in the rental unit.

#### Tenant's Application:

I ordered that the one month Notice to End Tenancy dated January 21, 2016 be cancelled. The landlord has reinstated the tenancy by accepting rent payments unconditionally and by confirming at the hearing that he does not object to the tenant continuing to reside in the rental unit. Further, while the landlord may have a monetary claim against the tenant, there is insufficient evidence on which an arbitrator can determine that these claims amount to extraordinary damage. The tenancy shall continue with the rights and obligations of the parties remaining unchanged.

The parties used the standard form residential tenancy agreement which is set out on the Residential Tenancy Branch website. That tenancy agreement provides that if there are to be any changes to the tenancy agreement it must be in writing and initialed by both sides. I dismissed the application of the tenant that the parties orally agreed the rent increase was to take effect on August 1, 2016. The tenant failed to attend the hearing and provide first hand evidence. Further, such a change to be enforceable must be in writing. The landlord has complied with the Act. As a result I determined that the Notice of Rent Increase is valid and that the rent commencing March 1, 2016 is \$1646.40.

I dismissed the tenant's claim of \$3200 as the tenant failed to produce sufficient evidence to prove this claim.

I dismissed the tenant's claim for the cost of the filing fee as the tenant has not been successful with this application.

Landlord's Claim:

I dismissed the landlord's application for an Order for Possession. For the reasons set out above I ordered that the Notice to End Tenancy dated January 21, 2016 be cancelled. There is no basis for the granting of an Order for 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 the landlord is entitled to \$100 for reimbursement of two Strata fines that were incurred by the Tenant. The solicitor for the tenant accepted responsibility for this claim.
- b. I determined the landlord is entitled to \$495.60 for the cost paid to the Strata Corporation for the emergency call-out to repair the water leaking from the tenant's sink. The tenant was aware or should have been aware there was a problem with the sink. He had an obligation to advise the landlord so that it would be dealt with without incurring expense outside of the unit.
- c. The landlord claimed the sum of \$571.20 for the cost of replacing the garburator and the cleaning of the bathroom drain. I determined the landlord is entitled to call in his own contractor and the damage to the garburator was caused by the Tenant. However, I determined the amount claimed is excessive in the circumstances and the evidence is insufficient to justify the amount claimed.. Further, the landlord failed to prove the claim to clean the bathtub drain was reasonable. I determined the landlord is entitled to \$450 of this claim.

I granted the landlord a monetary order in the sum of \$1045.60 plus the sum of \$100 in respect of the filing fee for a total of \$1145.60.

Conclusion:

In conclusion I determined as follows:

- I ordered that the Notice to End Tenancy dated January 21, 2016 be cancelled and I dismissed the Landlord's Application for an Order for Possession.
- I dismissed the tenant's application that there was an enforceable agreement that the Notice to Rent Increase would commence on August 1, 2016 and I determined that the Notice to Rent Increase that provided the rent is to be increase March 1, 2016 is valid.
- I dismissed the tenant's application for a monetary order and to recover the cost of the filing fee.
- I ordered that tenant pay to the landlord the sum of \$1145.60.

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: March 16, 2016

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Residential Tenancy Branch

