



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

For the tenant – CNR, MNDC, FF

For the landlord – OPR, MNR, MNSD, MNDC, FF

### Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenant applied to cancel a 10 Day Notice to End Tenancy for unpaid rent or utilities; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the landlord for the cost of this application. The landlord applied for Order of Possession for unpaid rent or utilities; for a Monetary Order for unpaid rent or utilities; for an Order permitting the landlord to keep all or part of the tenant's security deposit; and to recover the filing fee from the tenant for the cost of this application. The landlord withdrew his application for money owed or compensation for damage or loss under the *Act*, regulations or tenancy agreement

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Issues

I have determined that the portion of the tenant's application dealing with any claim other than the request seeking cancellation of the 10 Day Notice to End Tenancy is unrelated to the primary issue of disputing the Notice. As a result, pursuant to section 2.3 of the Rules of Procedure, I have severed the tenant's application. I further note that during the hearing the tenant agreed that she has applied in Civil Court for a judgment regarding monetary compensation for injuries suffered. As the matter of compensation is related to the injuries sustained by the tenant and her daughter and form part of the claim brought forward by the tenant in Civil Court then pursuant to s. 58(2)(c) of the *Act* I decline to hear that portion of the tenant's claim for which there is another application filed in another legal forum.

### Issue(s) to be Decided

- Is the tenant entitled to an Order to cancel the 10 Day Notice to End Tenancy for unpaid rent?
- Is the landlord entitled to an Order of Possession for unpaid rent?
- Is the landlord entitled to a Monetary Order to recover unpaid rent?
- Is the landlord permitted to keep all or part of the security deposit?

### Background and Evidence

The parties agreed that this tenancy started on May 16, 2010 for a fixed term tenancy that ended on May 15, 2013. A further fixed term tenancy was entered into on May 17, 2013 for a further term which ended on May 16, 2014. A third fixed term was entered into on May 14, 2014 which ended on May 16, 2015. Thereafter the tenancy continued on a month to month basis. Rent for this unit is \$2,000.00 per month due on the first of each month. The tenant paid a security deposit of \$1,000.00 on May 01, 2010.

The landlord testified that the tenant stopped paying her rent in February, 2015. Over the course of 2015 the tenant failed to pay rent each month to a total of \$22,000.00. The tenant has also failed to pay any rent for 2016 and currently owes an amount of \$12,000.00 for 2016.

The landlord testified that he had arranged for other people to collect the rent from the tenant but the tenant continually delayed in paying the rent each month and there was a period that the landlord was overseas and no rent was paid.

The landlord testified that on May 04, 2016 the landlord served the tenant with a 10 Day Notice to End Tenancy for unpaid rent (the Notice) by posting it to the tenant's door. A copy of the Notice has been provided in documentary evidence. The Notice states that the tenant owes \$30,000.00 due on February 01, 2014. The landlord testified that this was an error and it should have read February 01, 2016.

The landlord testified that he did have an agreement to pay the tenant's medical expenses after she fell in the unit in 2015. The landlord referred to a copy of a cheque provided in his documentary evidence showing that he paid \$7,361.16 to the tenant in December, 2015; however, there was not an agreement for the tenant to withheld this money from her rent.

The landlord seeks a Monetary Order to recover the unpaid rent and has limited this to the amount of \$25,000.00. The landlord seeks an Order to be permitted to keep the security deposit of \$1,000.00 in partial satisfaction of his claim. The landlord also seeks an Order of Possession effective as soon as possible and seeks to recover the filing fee of \$100.00.

The tenant disputed the landlord's claim. The tenant testified that the roof to the unit started leaking in November, 2014. The tenant wrote to the landlord and asked the landlord to repair the roof. Water was leaking into the living room at this time. In December, 2014 the landlord sent a contractor in to look at the roof but no repairs were

made by the landlord as the contractor informed the tenant that the landlord thought it was too expensive to repair.

The tenant testified that in January, 2015 she returned home with her two children and bags of shopping and when they entered the unit they slipped on water on the floor which had spread from the living room roof leak. The tenant testified that her son was not injured but the tenant and her daughter suffered serious injuries. The tenant informed the landlord's relative as the landlord was in China and in February the tenant went to see a lawyer and it was determined that the landlord did not have any insurance to cover the tenant's medical expenses.

The tenant testified that she incurred medical expenses for treatments over the amounts covered by BC medical plan. This included treatment from a chiropractor, acupuncture, pain killers, massage, and physiotherapy. The tenant and her daughter suffered from injuries to an elbow, wrist and knee. The tenant spoke to the landlord and testified that the landlord agreed to cover the tenant's and her daughter's ongoing medical expenses and agreed the tenant could deduct any monthly expenses from the rent. The tenant testified that she had already paid some medical expenses herself for January and February, 2015 so as soon as she had the landlord's agreement that she could deduct expenses from the rent, the tenant started to do so from March, 2015. The tenant provided a detailed account of her medical expenses for 2015 and 2016 as follows:

| Month           | Medical expenses | Rent deducted | balance    |
|-----------------|------------------|---------------|------------|
| March, 2015     | \$2,852.20       | \$2,000.00    | \$852.20   |
| April, 2015     | \$1,972.28       | \$2,000.00    | (27.72)    |
| May, 2015       | \$2,547.96       | \$2,000.00    | \$547.96   |
| June, 2015      | \$2,845.17       | \$2,000.00    | \$845.17   |
| July, 2015      | \$2,869.12       | \$2,000.00    | \$869.12   |
| August, 2015    | \$2,595.70       | \$2,000.00    | \$595.70   |
| September, 2015 | \$2,574.40       | \$2,000.00    | \$574.40   |
| October, 2015   | \$2,978.56       | \$2,000.00    | \$978.56   |
| November, 2015  | \$3,206.16       | \$2,000.00    | \$1,206.16 |
| December, 2015  | \$3,352.00       | \$2,000.00    | \$1,352.00 |

The tenant testified that as the landlord had agreed to pay all the tenant's and her daughter's medical expenses as he did not have insurance the landlord wrote the tenant a cheque for \$7,361.16 in December, 2015 to cover part of the balance of the medical expenses after the rent was deducted. The calculations show that this left a balance owed for medical expenses for 2015 of \$432.39. The tenant testified that the landlord agreed to pay the balance due but failed to do so.

The tenant testified that she continued to deduct her monthly medical expenses from her rent for 2016 as previously agreed as follows:

| Month          | Medical expenses | Rent deducted | Balance    |
|----------------|------------------|---------------|------------|
| January, 2016  | \$3,708.90       | \$2,000.00    | \$1,708.90 |
| February, 2016 | \$3,060.96       | \$2,000.00    | \$1060.96  |
| March, 2016    | \$3,185.00       | \$2,000.00    | \$1,185.00 |
| April, 2016    | \$3,744.09       | \$2,000.00    | \$1,744.09 |
| May, 2016      | \$2957.00        | \$2,000.00    | \$957.00   |
| June, 2016     | \$???            |               |            |

The tenant testified that each month she has provided the landlord with an email showing the medical expenses for the previous month and copies of all receipts for those expenses. The landlord met with the tenant's lawyer in November, 2015 as he wanted to try to settle the matter; however, by the middle of December the landlord had disappeared and could not be contacted. A relative of the landlord informed the tenant he had gone to China. The tenant did not receive anything from the landlord that would lead her to think he was not still happy with the agreement for her to deduct rent from the medical expenses incurred each month until May, 2016 when the landlord sent a man to the tenant's unit and served the tenant with the 10 Day Notice to End Tenancy for unpaid rent on May 04, 2016.

The tenant testified that when she moved into the unit the landlord did not inform the tenant that the unit was on a septic system which the landlord did not empty for six years. The septic waste backed up into the basement and the tenant had to clean up this waste. The landlord would not have the septic tank pumped out despite the tenant writing to inform the landlord that it was backing up into the unit. The tenant had to pay \$640.00 to have the tank pumped and cleaned and a copy of the receipt was sent to the landlord. The tenant testified that she deducted this amount from her rent as it was for the cost of doing emergency repairs.

The tenant testified that due to the agreement she had with the landlord to deduct the medical expenses from her rent, then at the time the Notice was issued and served upon the tenant there was no rent outstanding. The tenant seeks to have the Notice cancelled.

The landlord testified that the roof was repaired in November 2015. The landlord testified that he did not have a verbal agreement for the tenant to deduct rent for the cost of any medical expenses. The landlord testified that he does not trust that the tenant's and her daughter's injuries were caused due to the landlord not repairing the roof. The tenant had actually done an emergency repair on the roof at some time. The landlord testified that he has received a Civil Court Claim Notice from the tenant for

compensation for injuries. The reason the landlord did not enter into a settlement agreement with the tenant was because the tenant and her lawyer told the landlord that they were taking this to Civil Court.

The tenant testified that she has not been able to work due to her injuries and the Civil Court claim is related to general damage, special damage and health care service.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. In this matter the landlord has the burden of proof to show that the tenant owes rent of \$32,000.00. The tenant has disputed the landlord's claim and although the tenant agreed she has withheld the rent since March, 2015 this was only withheld with the landlord's agreement that he would pay the tenant's medical expense and the tenant could deduct it from the rent each month.

I find upon review of the documentary evidence and the oral testimony before me that I am more inclined to find in favor of the tenant's evidence that the parties had a verbal agreement in place for the tenant to deduct the cost of her and her daughter's medical expenses from the rent each month. While verbal agreements are almost impossible for a third party to interpret, I am inclined to prefer the tenant's version of events and find they have more merit than the landlord's version, due to a number of reasons. The landlord failed to provide the tenant with a 10 Day Notice to End Tenancy for unpaid rent at any time in the previous 15 months. If this agreement was not in place it would have been circumspect for the landlord to try to mitigate any loss by notifying the tenant that there was unpaid rent. The landlord also failed to put the tenant on written notice that she must not withhold rent for her medical expenses when he received the monthly emails and receipts for these expenses. Furthermore, the landlord paid most of the shortfall between the medical expenses and the rent in December, 2015.

Due to the above I am satisfied that the landlord did agree to allow the tenant to withhold her rent from March, 2015 to cover ongoing medical expenses. The landlord

has not provided clear instruction to the tenant as to how long he expected this agreement to continue and the tenant therefore continued to withhold rent from January to the present day in 2016.

I therefore find that at the time the landlord issued and served the tenant with the 10 Day Notice to End Tenancy that there was no rent outstanding and as such I find the 10 day Notice has no force or effect and is hereby cancelled. Consequently, the tenant's application to cancel the Notice is upheld.

The landlord's application for an Order of Possession and a Monetary Order are dismissed. As this tenancy will continue at this time, the security deposit must continue to be held in trust by the landlord until the tenancy ends and must then be dealt with under s. 38 of the *Act*.

As the landlord's claim has been unsuccessful the landlord must bear the cost of filing his own application.

The tenant is entitled to recover the filing fee of **\$100.00** from the landlord pursuant to s. 72(1) of the *Act*. The tenant may deduct this amount from her rent that is due and payable for July, 2016.

I further find that any future rent due and payable to the landlord from July 01, 2016 must be paid in full by the tenant each month going forward from July and that no further deductions can be made for ongoing medical expense as it would not be reasonable for this agreement to continue without an end date. The matter of further compensation must be dealt with through other legal remedy as pursued by the tenant in Civil Court.

### Conclusion

The landlord's application is dismissed without leave to reapply.



The tenant's application to cancel the Notice is upheld. The Notice dated May 04, 2016 is cancelled and the tenancy shall continue.

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: June 07, 2016

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Residential Tenancy Branch