



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes                      CNR, MT, MNDC, RR, FF

### Introduction

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order to cancel the 10 day Notice to End Tenancy dated May 2, 2016.
- b. A monetary order in the sum of \$4200.
- c. An order allowing the tenant to reduce rent for repairs, services or facilities agreed upon but not provided.
- d. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence 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. The tenant testified she has documents in her possession but was not able to deliver them to the Residential Tenancy Branch because she was working and because of lack of funds. I determined it was appropriate to proceed with the hearing in the absence of these documents.

I find that the Notice to End Tenancy was served on the Tenant by posting on May 2, 2016. Further I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the landlord on May 10, 2016. 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 May 2, 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 allowing the tenant to reduce rent for repairs, services or facilities agreed upon but not provided.
- d. Whether the tenant is entitled to recover the cost of the filing fee?

### Background and Evidence

On July 13, 2012 the parties entered into a one year fixed term tenancy agreement that provided that the tenancy would start on August 1, 2012, end on July 31, 2013 and become month to month after that. The tenancy agreement provided that the tenant(s) would pay rent of \$1250 per month payable in advance on the first day of each month. The rent has been increased to \$1359 per month payable in advance on the first day of each month. The tenant(s) paid a security deposit of \$625 and a pet damage deposit of \$625.

The tenant failed to pay the rent when due on May 1, 2016. The tenant subsequently paid the rent for May on June 1, 2016. It was accepted by the landlord for use and occupation only. The rent for June remains unpaid. .

### Application to Cancel the 10 day Notice to End Tenancy:

I dismissed the application to cancel the 10 day Notice to End Tenancy. The Residential Tenancy Act provides that where a Tenant has been served with a 10 day Notice to End Tenancy for unpaid rent, the tenant has 5 days to pay the arrears. If the tenant pays the arrears in 5 days the Notice is void. If the tenant pays the arrears after the 5 day period the landlord has an election to make. The landlord can accept the payment “for use and occupation only” in which case the tenancy ends at the end of the rental payment period. Alternatively, the landlord can accept the payment unconditionally and reinstate the tenancy. In this case the landlord accepted the payment for “use and occupation only” and stated they want the tenancy to end.

As a result I dismissed the tenant’s application to cancel the Notice to End Tenancy. I order that the tenancy shall end on the date set out in the Notice.

### Order for Possession:

The Residential Tenancy Act provides that where an arbitrator has dismissed a tenant’s application to cancel a Notice to End Tenancy, the arbitrator must grant an Order for Possession. As a result I granted the landlord an Order for Possession. I set the effective date of the Order for Possession for June 17, 2016.

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

### Application for a Monetary Order:

The tenant seeks compensation in the sum of \$4200 based on the following:

- She was without a bathroom for 2 weeks when she moved into the rental unit in August 2012.
- The dishwasher was not working for 5 months when she moved in.

- The oven on the stove was not working for 18 months at the start of the tenancy. The management was not well organized at the start of her tenancy and they lost her requests for repair.
- Her car was hit and run by a friend of the previous manager.
- Her car was vandalized after the former manager placed a threat saying that her friend/neighbor would vandalize the car.
- ICBC has paid out on her insurance for the damage to her vehicle.

The landlord testified as follows:

- They were not present at the time the tenant is making her claims.
- They have no record of the tenant being without a bathroom for 2 weeks.
- Their records indicate that the dishwasher was replaced within 3 weeks of receiving the tenant's request.
- There is no record of the tenant making a maintenance request for the oven.
- There is no record of the tenant making a complaint with respect to her vehicle.

Analysis:

After carefully considering all of the disputed evidence I determined as follows:

- The tenant failed to prove that the landlord was responsible for the hit and run damage to her car and the vandalism to her car. The tenant alleges another tenant caused the damage. This is not the landlord's responsibility even if the other tenant was a friend of the then manager. Further, the tenant's insurance has paid her for the damage. The tenant failed to prove her insurance has gone up.
- I determined the tenant is entitled to compensation for being without a bathroom for 2 weeks at the start of the tenancy.
- The tenant has an obligation to mitigate her loss. This includes an obligation to pursue repair request in a timely manner including the filing of an Application for Dispute Resolution. The tenant failed to prove she is entitled to compensation for the lack of a dishwasher for 5 months claimed.. I determined she was without a dishwasher for 3 weeks.
- The tenant testified she was without an oven for 18 months. I determined compensation for this item should be limited to being without an oven for three months as a repair order would have been made had she pursued to claim in a timely manner. In the circumstances I determined the tenant is entitled to the following:
  - Compensation in the sum of \$200 for the lack of a bathroom for 2 weeks.
  - Compensation in the sum of \$50 for the lack of a dishwasher.
  - Compensation in the sum of \$50 for the lack of an oven.

The remaining claims for compensation are dismissed.

Monetary Order, Reduction of Rent and Cost of Filing fee

I determined the tenant has established she is entitled to compensation in the sum of \$300 plus \$50 (reduced as the tenant has been only partially successful) for a total of \$350.

The parties acknowledge rent has not been paid for June 2016. Section 72(2)(a) of the Residential Tenancy Act provides as follows:

**Director's orders: fees and monetary orders**

**72 (2)** If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted

(a) in the case of payment from a landlord to a tenant, from any rent due to the landlord, and

I ordered this monetary order in the sum of \$350 be applied to the rent that is owed for June 2016.

Conclusion:

I dismissed the tenant's application for cancel the 10 day Notice to End Tenancy. I granted an Order for Possession effective June 17, 2016. I granted the tenant a monetary order in the sum of \$350 and ordered that it be applied to the outstanding rent for June 2016.

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 09, 2016

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Residential Tenancy Branch