



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

Tenant's application: CNR, OLC, FF, MNDC

Landlord's application: OPR, MNR, MNSD, MNDC, FF

### Introduction

This was a hearing with respect to applications by the tenant and by the landlord. The hearing was conducted by conference call. The tenant and the landlord called in and participated in the hearing. The landlord was assisted at the hearing by his representative. The tenant applied to cancel a Notice to End Tenancy for unpaid rent. He amended his application to include a second Notice to End Tenancy given by the landlord and further amended his claim to include a claim for monetary compensation.

### Issue(s) to be Decided

Should the Notice to End Tenancy for unpaid rent dated July 11, 2016 be cancelled?  
Is the landlord entitled to an order of possession pursuant to the Notice to End Tenancy?

Should the landlord be ordered to comply with the *Residential Tenancy Act*, Regulation or tenancy agreement?

Is the tenant entitled to a monetary award and if so, in what amount?

### Background and Evidence

The rental unit is a basement suite in the landlord's house in Burnaby. The tenancy began in May, 2014. The monthly rent is \$650.00, payable on the first of each month. The tenant paid a security deposit of \$320.00 at the start of the tenancy.

The landlord testified that the tenant did not pay rent for July 2016 when it was due. He said that he went away from the rental property on June 30<sup>th</sup> and left instructions with his neighbour to check his mailbox during his absence for rent money that might be left by the tenant. The landlord said that the tenant left the June rent payment in his mailbox and that is why he asked his neighbour to check for him when he went away.

The landlord submitted a letter from his neighbour who said that she checked his mailbox "first thing in the morning" on July 1, 2016, but there was no rent money. She said she checked twice more that day, but there was no money. She checked again on July 2<sup>nd</sup> and July 3<sup>rd</sup>. She informed the landlord on the afternoon of July 3<sup>rd</sup> that no rent money had been received.

The landlord gave the tenant a handwritten notice to end tenancy dated July 4<sup>th</sup> that was slid under the tenant's door. The landlord testified that he gave the landlord another 10 day Notice to End Tenancy in the proper form. The Notice to End Tenancy was dated July 11, 2016. It said that the tenant failed to pay rent in the amount of \$650.00 that was due on July 1, 2016. The Notice to End Tenancy did not state a date when the tenant must move out of the rental unit. The landlord said that he personally served the tenant with the Notice to End Tenancy on July 11, 2016.

The landlord testified that the tenant has paid the rent in cash throughout the tenancy until August, 2016; the rent for August was paid by cheque. The landlord said that he did not give the tenant receipts for the cash payments: "because the tenant did not ask for them."

The tenant testified that he has paid rent in cash since the beginning of the tenancy because the landlord told him that he prefers cash payments. The tenant said that on June 30<sup>th</sup> he was out visiting a friend. He drove back to the rental property, stopping at his bank on the way to withdraw rent money. He placed the rent money in an envelope and left it in the landlord's mailbox. The tenant said he left the envelope in the mailbox around 2:30 P.M. The tenant said that he thought he heard someone in the landlord's residence before he left the envelope, but no one answered the door. The tenant testified that the landlord had started acting in a hostile manner towards him and stopped communicating with him before July, so he was not surprised when the landlord did not answer the door.

The tenant said he drove his friend home and returned to the rental unit around 8:30 P.M. on June 30<sup>th</sup>. He checked the landlord's mailbox on his return and the envelope with the rent money was gone.

The tenant testified that the landlord apparently became angry with him over his use of the garage and blamed the tenant for using all of the welding wire on the spool of the landlord's MIG welder. The tenant said that he used the landlord's garage, or more accurately the area outside the garage to perform car repairs. The tenant said he used the landlord's welder with the landlord's permission to repair a hole in the floor of his car, but later the landlord blamed him for using all of the welding wire to fix his exhaust system when in fact the tenant had the exhaust welding performed by a muffler shop. The tenant said since then the landlord has been uncommunicative and has

harassed him. The tenant said the landlord has entered the rental unit unannounced and without permission while the tenant was at home; he said he has been awakened by the sound of the landlord in his rental unit..

The tenant said that he discussed the replacement of the carpet in the rental unit when the tenancy began because it was stained and soiled by the previous tenant. He said the landlord agreed to replace it but it was not done before he moved in. The tenant testified that the landlord agreed to pay half the cost of an inexpensive area carpet to cover the existing carpet. He purchased a carpet from Walmart for \$50.00, but said the landlord did not contribute to the cost.

The tenant testified that, as set out in his tenancy agreement, his rent included wireless internet service. The tenant said the landlord turned off his internet access. He said that the internet was crucial to his job search efforts. The tenant testified that he had to use his cell phone data service in the absence of internet service. The tenant approached Telus to provide him with internet service to replace the service taken away by the landlord. He wanted to use Telus as the provider because he had an existing account with them. The tenant said that the landlord instructed a Telus employee who was at the rental property, that he should not make a connection to the rental unit for the tenant. The tenant said he was forced to sign an agreement with Shaw to provide internet service and he had to pay them a \$100.00 connection fee that he would not have had to pay if Telus provided his internet service. The tenant claimed reimbursement for his costs to provide internet service and for his increased cell phone charges.

The tenant claimed the following amounts:

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|---|-------------|
| • Shaw, Internet Installation:                | \$162.40    |
| • Telus Cell phone overuse charges:           | \$159.15    |
| • Cost of area rug:                           | \$49.97     |
| • Removal of internet service rent reduction: | Unspecified |
| • Loss of quiet enjoyment, one month's rent:  | \$650.00    |

Total:	\$1,021.52
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The landlord acknowledged that he turned off the tenant's wireless internet access. He said that he did so because the tenant was not honouring his obligations as a tenant. He accused the tenant of making a mess of the rental property and of being a hoarder. He claimed that the tenant was putting his property at risk. The landlord did not submit any documentary evidence with respect to these assertions and the only Notice to End Tenancy that has been given is for unpaid rent.

### Analysis

The tenant has paid the rent in cash from the outset of the tenancy in May, 2014. The landlord has not provided receipts for any of the rent payments despite section 26 (2) of the *Residential Tenancy Act* which provides that: "A landlord must provide a tenant with a receipt for rent paid in cash."

The landlord confirmed that the tenant has paid rent in the past by leaving it in his mailbox. The tenant paid the June rent by leaving it in the mailbox. He included a note with the June rent asking about whether the landlord wanted his services for yard work as he had performed in the past, and also asking the landlord to provide receipts for rent payments. The tenant did not receive a reply or copies of receipts.

The tenant testified that he paid the rent in cash to the landlord's mailbox because the landlord was either not at home or would not answer his door. The tenant has provided supporting documents, including his bank withdrawal records to support his testimony that the July rent was paid in cash on June 30, 2016. I accept the tenant's testimony that the landlord asked for cash rent payments. By his own admission, the landlord has not provided receipts for the rent payments since the tenancy began. I accept the tenant's evidence that he paid the July rent on June 30<sup>th</sup> by placing it in the landlord's mailbox. The fate of the rent payment is unknown, but the landlord authorized this mode of payment and I find that the landlord bears the risk of loss after the payment was made to his mailbox. I find that the landlord has not established that the tenant failed to pay rent for July when it was due. The tenant's application to cancel the Notice to End Tenancy is granted and the landlord's application for an order of possession and a monetary order is dismissed without leave to reapply.

I order that the Notice to End Tenancy dated July 11, 2016 be, and is hereby cancelled. The tenancy will continue until ended in accordance with the *Residential Tenancy Act*.

The landlord acknowledged that he cut off the tenant's internet access which was included in the rent. The tenant incurred costs to replace the internet service. Shaw charged the tenant \$162.40 for the installation and service for one month. The tenant is entitled to recover that amount from the landlord. I do not have convincing evidence to show how the tenant's cell phone bill was increased due to the loss of internet service; he provided a cell phone bill from someone, apparently a relative, but it does not establish that the tenant is entitled to compensation for cell phone services.

The tenant claimed for the cost of a carpet in the amount of \$50.00. I accept the tenant's testimony that the landlord agreed to replace the exceedingly soiled carpet but did not do so. The tenant said the landlord then agreed to pay for half the cost of an

area carpet to cover the stained areas. I allow the claim for a portion of the cost of the replacement carpet in the amount of \$25.00.

I do not find that there is sufficient evidence to support a claim for a rent reduction or compensation on the basis of harassment and the tenant's claim for loss of quiet enjoyment in the amount of \$650.00 is denied. The tenant is entitled to recover the \$100.00 filing fee for his application, for a total award of \$287.40 and I grant the tenant a monetary order under section 67 in the said amount. This order may be registered in the Small Claims Court and enforced as an order of that court. Instead of enforcing the monetary order the tenant may choose to deduct the amount from a future instalment of rent.

If the landlord does not restore the tenant's wireless internet service, the tenant may deduct the cost of internet service from future rent payments by providing the landlord with a copy of the bill setting out the amount deducted for internet service.

### Conclusion

The landlord's application has been dismissed. The tenant's application has been allowed in part. The Notice to End Tenancy has been cancelled and the tenant has been granted a monetary order in the amount of \$287.40.

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: August 22, 2016

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Residential Tenancy Branch