



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes:

**MND, O, FF**

### Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested compensation for damage to the rental unit, an order of possession based on a fixed term tenancy agreement and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing.

### Preliminary Matters

The landlord said that 3 documents were submitted to the Residential Tenancy Branch (RTB) and given to the tenant. The landlord said that in October 2016 a copy of the six page tenancy agreement, an invoice and cheque in the sum of \$550.00 were submitted. The tenant confirmed receipt of the documents, but received only the second page of the standard RTB tenancy agreement.

The tenant said that on November 15, 2016 the tenant submitted 36 pages of evidence to the RTB. The landlord received those documents two days ago.

None of the evidence was before me. The hearing proceeded on the basis of oral submissions; with the intention to obtain copies of documents should that be necessary.

### Issue(s) to be Decided

Is the landlord entitled to compensation in the sum of \$15,000.00 for the cost of the strata insurance deductible?

Is the landlord entitled to an order of possession based on a fixed term tenancy agreement?

### End of Tenancy

The parties have been signing a series of six month fixed term agreements, commencing in December 2013. There was some dispute regarding the most recent agreement which would have commenced on May 1, 2016.

During the hearing the parties agreed the tenancy would end effective December 1, 2016 at 1:00 p.m. The parties fully acknowledged that an order would be issued in support of the agreement.

Section 63 of the Act provides:

#### ***Opportunity to settle dispute***

**63** (1) *The director may assist the parties, or offer the parties an opportunity, to settle their dispute.*

*(2) If the parties settle their dispute during dispute resolution proceedings, the director may record the settlement in the form of a decision or an order.*

Therefore, in support of the mutually settled agreement to end the tenancy I find and order that the tenancy will end effective December 1, 2016 at 1:00 p.m. The landlord has been granted an order of possession that is effective **December 1, 2016 at 1:00 p.m.** This order may be served on the tenant, filed with the Supreme Court of British Columbia and enforced as an order of that Court.

### Monetary Claim

The parties agreed that approximately one year ago the tenant contacted the landlord and strata council to report the signs of condensation in the bathroom and water in the common area hallway. The strata president and landlord attended at the rental unit. The landlord said she inspected the bathroom and could find no signs of a moisture problem. A plumber was not retained to investigate the tenants' concerns.

In early April 2016 the tenant noticed the problem had worsened. There was a musty smell and condensation in the bathroom. The landlord, strata president and a restoration company representative met to discuss what was discovered to be a leak in the wall of the bathroom.

The landlord said that the cap on the overflow in the bathtub was missing and that this somehow caused the problem. The landlord was questioned in relation to this submission, as it is common knowledge that bathtubs have overflow outlets and that a missing cover would not render the overflow inoperable. The landlord indicated that the overflow had malfunctioned.

The tenant had a copy of the restoration company report. The tenant said that the report issued by the restoration company referred to deficient plumbing behind the wall and that the owner was to repair the plumbing. This was not disputed by the landlord.

The strata council assumed responsibility for the repairs and have charged the landlord an insurance deductible in the sum of \$15,000.00. The landlord believes the tenant is responsible for the leak and should pay that deductible.

The landlord said that she did not purchase insurance to cover liability.

The tenant has insurance. The tenants' insurer told the tenant that as she does not own the unit repairs would not be covered by the tenant policy.

#### Analysis – Monetary Claim

Section 32 of the Act requires a tenant to make any repair for damage caused, outside of normal wear and tear. Based on the evidence before me I find, on the balance of probabilities that the tenant is not responsible for the leak that occurred in the bathroom.

I find that the landlord was made aware of the tenants' concerns well before April 2016 and that the landlord's assessment did not include any advice by a plumber. The report issued by the restoration company determined that the owner should repair faulty plumbing. This type of repair is not the responsibility of a tenant. There was no evidence to convince me that the tenant caused plumbing in the wall of the bathroom to malfunction. It is not the fault of the tenant that a full inspection of the suspected problem was not made when the tenant initially reported the concern regarding condensation in the bathroom.

Therefore, I find that the claim for strata insurance deductible is dismissed.

#### Conclusion

By mutual agreement the tenancy will end at 1:00 p.m. on December 1, 2016.

The monetary claim is dismissed.

This decision is final and binding and 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: November 24, 2016

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Residential Tenancy Branch