



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding H.W. ROOMS INC.  
and [tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes:

OPC, MND, FF

### Introduction

The hearing was convened in response an Application for Dispute Resolution, in which the Landlord applied for an Order of Possession, a monetary Order for damage to the renal unit, and to recover the fee for filing this Application for Dispute Resolution.

The Agent for the Landlord stated that on February 17, 2017 the Application for Dispute Resolution, the Notice of Hearing, and evidence submitted with the Application for Dispute Resolution were personally served to each Tenant. In the absence of evidence to the contrary I find that these documents were served to the Tenants in accordance with section 89 of the *Residential Tenancy Act (Act)*.

As the Application for Dispute Resolution and the Notice of Hearing were served to the Tenants, the hearing proceeded in their absence. As the evidence submitted with the Application for Dispute Resolution was personally served to each Tenant, it was accepted as evidence for these proceedings.

On March 06, 2017 the Landlord submitted 10 pages of evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that these documents were personally served to each Tenant on March 03, 2017. In the absence of evidence to the contrary I find that these documents were served to the Tenants and they were accepted as evidence for these proceedings.

### Issue(s) to be Decided

Is the Landlord is entitled to an Order of Possession and/or compensation for damage to the door of the rental unit?

### Background and Evidence

The Agent for the Landlord stated that:

- this tenancy began prior to the Landlord purchasing the rental unit in July of 2016;

- rent of \$750.00 is due by the first day of each month;
- shortly after purchasing the rental unit the Landlord changed all of the locks to the rental units and provided the occupants with new keys;
- on February 04, 2017 the Tenant asked someone at the front desk for access to the rental unit because they did not have a key to the unit;
- on February 04, 2017 the front desk personnel was unable to open the lock with the master key;
- on February 05, 2017 the Agent for the Landlord went to the rental unit and determined that the door lock had been changed;
- on February 05, 2017 the Agent for the Landlord noticed the door to the unit appeared to have been forced open;
- he concluded that the Tenant forced the door open because they were unable to open the new lock;
- the Tenants denied forcing open the door but did not explain how the door was damaged;
- the door was not damaged when the new locks were installed;
- on February 05, 2017 a One Month Notice to End Tenancy for Cause was posted on the door of the rental unit;
- the Notice to End Tenancy declared that the Tenants must vacate the rental unit by February 28, 2017;
- the One Month Notice to End Tenancy for Cause declared that the tenancy was ending because the Tenants had caused extraordinary damage; and
- the Tenants are still occupying the rental unit.

The Notice to End Tenancy that was submitted in evidence is not signed. The Agent for the Landlord stated that the Notice to End Tenancy that was submitted in evidence is a computer generated copy and that the copy that was posted on the Tenants' door was signed.

The Landlord submitted an estimate for 10 doors and door frames, in the amount of \$2,835.50. The Agent for the Landlord stated that the claim for replacing the door and door frame, in the amount of \$297.73, is based on this estimate.

The Agent for the Landlord stated that the claim for hinges, a handle, and lock, in the amount of \$150.00, is an estimate based on previous purchases, although no proof of previous purchases was submitted in evidence.

The Agent for the Landlord stated that the claim for replacing the door, in the amount of \$180.00, is based on an estimate that it will take 2 hours to replace the door and on the hourly wage of the on-site repair person, which is \$90.00 per hour.

### Analysis

Section 47 of the *Act* authorizes a landlord to end a tenancy for a variety of reasons by providing a tenant with a One Month Notice to End Tenancy for Cause.

On the basis of the testimony of the Agent for the Landlord and in the absence of evidence to the contrary, I find that a signed One Month Notice to End Tenancy for Cause, served pursuant to section 47 of the *Act*, was posted on the Tenant's door on February 05, 2017, which declared that the Tenants must vacate the rental unit on, or before, February 28, 2017.

Section 90 of the *Act* stipulates that a document that is posted on a door is deemed to be received on the third day after it is posted. I therefore find that the Tenants are deemed to have received the One Month Notice to End Tenancy that is the subject of these proceedings on February 08, 2017.

Section 47(2) of the *Act* stipulates that a One Month Notice to End Tenancy for Cause must end the tenancy effective on a date that is not earlier than one month after the date the notice is received and the day before the day in the month that rent is payable under the tenancy agreement. As the Tenants are deemed to have received this Notice to End Tenancy on February 08, 2017 and rent is due by the first of each month, the earliest effective date that the Notice is March 31, 2017.

Section 53 of the *Act* stipulates that if the effective date stated in a notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of this One Month Notice to End Tenancy for Cause is March 31, 2017.

Section 47(5) of the *Act* stipulates that tenants are conclusively presumed to have accepted that the tenancy ends on the effective date of a notice received pursuant to section 47 of the *Act* and that a tenant must vacate the rental unit by that date unless the tenant disputes the notice within ten days of receiving it. As there is no evidence that the Tenants filed an application to dispute the One Month Notice to End Tenancy for Cause, I find that the Tenants are conclusively presumed to have accepted that the tenancy is ending on March 31, 2017 on the basis of the One Month Notice to End Tenancy for Cause, dated February 05, 2017. I therefore grant the Landlord's application for an Order of Possession.

I find, on the balance of probabilities, that the Tenants changed to lock on the door to the rental unit; that they were subsequently unable to access the rental unit with their key; and that they forced the door in order to enter their rental unit. In the absence of any reasonable explanation from the Tenants for the damage, I find that it is reasonable to conclude that the Tenants damaged the door when they were unable to access the rental unit. As the Tenants damaged the door, I find they are obligated to pay for repairing the door.

On the basis of the estimate for 10 doors and door frames, in the amount of \$2,835.50, I find that the Landlord has submitted sufficient evidence to establish that it will cost \$297.73 to purchase a replacement door and frame. I therefore find that the Landlord is entitled to compensation in this amount.

In addition to establishing that a tenant damaged a rental unit a landlord must also accurately establish the cost of repairing the damage caused by a tenant whenever compensation for damages is being claimed. I find that the Landlord failed to establish the true cost of replacing the hinges, door handle, and door lock. In reaching this conclusion, I was heavily influenced by the absence of any documentary evidence that corroborates the Landlord's estimate that it will cost \$150.00 to replace the items. When receipts or estimates are available, or should be available with reasonable diligence, I find that a party seeking compensation has a duty to present estimates or receipts. As the Landlord has submitted insufficient evidence to establish that it will cost \$150.00 to replace the hinges, door handle, and door lock, I dismiss this portion of the Landlord's claim.

I find that the Landlord's estimate that it will take approximately 2 hours to replace the door to be reasonable. On the basis of the testimony of the Landlord and In the absence of evidence to the contrary, I find that the Landlord pays the on-site repair person an hourly wage of \$90.00.

Section 7(2) of the *Act* stipulates, in part, that a landlord who claims compensation for damage or loss that results from a tenant's non-compliance with the *Act*, the regulations, or their tenancy agreement, must do whatever is reasonable to minimize the damage or loss. I find that paying a person \$90.00 per hour to replace a door is excessive and I find it highly likely that they could hire a person, perhaps a person with less skill than the on-site repair person, less than \$90.00 per hour to replace the door. As the Landlord has, in my view, failed to mitigate their losses by finding someone who works at a more reasonable rate, I dismiss this portion of the Landlord's claim.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the cost of filing this Application for Dispute Resolution.

### Conclusion

**I hereby grant the Landlord an Order of Possession that is effective at 1:00 p.m. on March 31, 2017.** This Order may be served on the Tenants, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

The Landlord has established a monetary claim, in the amount of \$397.73, which includes \$297.73 for damages and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution. **Based on these determinations I grant the Landlord a monetary Order for \$397.73.** In the event the Tenants do not comply with

this Order, it may be served on the Tenants, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Although the Landlord has not applied to retain the security deposit in this Application for Dispute Resolution, the Landlord has the right to retain from the Tenants' security deposit any amount of this monetary Order that remains unpaid at the end of the tenancy, pursuant to section 38(3) of the *Act*.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: March 15, 2017

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Residential Tenancy Branch