



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, DRI, LAT, LRE, MNDC, MNSD, OLC, PSF, RR, OPR, MNR, MNDC, FF

### Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”).

The Tenant applied on May 10, 2017 for:

1. An Order cancelling a notice to end tenancy - Section 46;
2. An Order in relation to a rent increase - 43;
3. An Order allowing a lock change - Section 70;
4. An Order limiting the Landlord’s right of entry - Section 70;
5. A Monetary Order for compensation - Section 67;
6. An Order for the return of the security deposit - Section 38;
7. An Order for the Landlord’s compliance - Section 62;
8. An Order for the provision of services or facilities - Section 65; and
9. An Order for a rent reduction - Section 65.

The Landlord applied on May 15, 2017 for:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent or utilities - Section 67;
3. A Monetary Order for compensation - Section 67; and
4. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the Tenant entitled to a cancellation of the notice to end tenancy?

Is the Tenant entitled to the orders for any of its remaining claims?

Is the Landlord entitled to an order of possession?

Is the Landlord entitled to unpaid rent and utilities?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The following are agreed facts: The tenancy started on December 1, 2015. Rent of \$1,850.00 is payable on the first day of each month. At the outset of the tenancy the Landlord collected \$925.00 as a security deposit. The Tenant did not pay rent for May 2017 and on May 7, 2017 the Landlord served the Tenant in person with a 10 day notice to end tenancy for unpaid rent (the "Notice"). The Tenant did not pay rent for June 2017 and has not moved out of the unit.

The Tenant states that she is planning on moving out of the unit on or before June 31, 2017 but does not wish to enter into a mutual agreement to end the tenancy for any date. The Tenant indicates that she is really only concerned about the Landlord's claim for unpaid rent, that there is no rent increase and the remaining claims are not important for this hearing. The Tenant states that she did not pay the rent as the Landlord did not serve her with a two month notice to end tenancy for landlord's use. The Tenant states that the Landlord has not served her with any notice to end tenancy other than the Notice for unpaid rent. The Tenant states that the Landlord has not done or said anything to the Tenant about ending her tenancy for any reasons other than unpaid rent.

The Tenant states that she is renting a main unit in a house that also contains two other suites. The Tenant states that one of those suites (the "Right Suite") was found to be illegal by the city and the Landlord was ordered to remove the stove in the Right suite and to remove the sealed off connecting door between the Right suite and the Tenant's

unit. The Tenant states that after complaining about her privacy from removal of that door the city relented on that order and has allowed that door to remain for the time being. The Tenant states that prior to December 2016 she was renting rooms in her unit with the permission of the Landlord. The Tenant states that “a change occurred in December” and the Tenant told the Landlord that she would either move or take in roommates. The Tenant states that the city told her that it was illegal for her to take in “roomers” and that the Tenant did not know that this was illegal. The Tenant states that the city did not order the Landlord to close her suite and only made suggestions to the Landlord. The Tenant states that the Landlord needed to make renovations to the Right Suite and in order to do this the Landlord needed to end the Tenant’s tenancy with a two month notice to end tenancy. The Tenant states that she withheld the rent because it was not payable.

The Landlord states that they did not seek to end the tenancy for anything other than unpaid rent for May and June 2017. The Landlord provides written submissions that it did not act in any way to end the tenancy as a result of any acts by or conversations with the city. The Landlord states that on April 15, 2017 the Tenant gave notice to end the tenancy for May 15, 2017 and that she then changed her mind several times about moving out. The Landlord states that he seeks an order of possession for June 30, 2017.

The Landlord states that the Tenant is required to pay 63% of the water bill and has failed to pay the water for the period January to March 2017. The Landlord claims \$153.81 and provides the water bills. The Landlord also claims an estimated \$160.00 for the cost of water for the period April to June 2017.

### Analysis

Section 26 of the Act provides that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent. Sections 51(1) of the Act provides that a tenant who receives a

notice to end a tenancy for landlord's use of property is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement. Section 51(1.1) provides that a tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord. It is undisputed that the Landlord did not serve the Tenant with a two month notice to end tenancy for landlord's use. Although the Tenant argues that the Landlord should have served the Tenant with such a notice, the Tenant also gives evidence that the Landlord was only told by the city to close down the Right Suite and that the Landlord never told her that he was going to end the Tenant's tenancy due to the actions of the city. There is simply no evidence that the Landlord was supposed to close down the Tenant's unit. There is only evidence that the city informed the Tenant that she could not use her unit as a rooming house. I am not persuaded that the city has the jurisdiction to tell the Tenant how she may or may not use her rental unit. There is no evidence that the Landlord intended to end the tenancy due to the acts of the city. Based on the undisputed evidence that the Tenant did not receive any notice to end tenancy for landlord's use I find that the Tenant had no right to withhold any rental monies for this purpose.

Section 55 of the Act provides that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the landlord must be granted an order of possession of the rental unit if the landlord's notice to end tenancy complies in form and content and during the dispute resolution proceeding, the landlord's notice is upheld. Based on the undisputed evidence that no rent was paid for May 2017, I find that the Notice is valid. The Tenant is therefore not entitled to its cancellation and I dismiss this claim. As the Notice is valid and as the Landlord asks for an order of possession for June 30, 2017 I grant an order of possession to be effective at 1:00 p.m., on June 30, 2017.

As the tenancy ends I dismiss the Tenant's claims in relation to the locks, the Landlord's entry to the unit, the Landlord's compliance, the rent increase and the services and

facilities. The Tenant's claim to compensation that is not related to the Tenant's evidence and argument surrounding the two month notice to end tenancy is dismissed with leave to reapply.

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. Based on the undisputed evidence of the rental terms of the tenancy and the undisputed evidence of unpaid rent I find that the Landlord has substantiated an entitlement to **\$3,700.00** for May and June 2017 rents. Based on the undisputed evidence that the tenancy agreement requires the Tenant to pay for a portion of the water costs and given the Landlord's evidence that this portion is 63% of the water costs and that the Tenant did not pay the water costs for January to March 2017 I find that the Tenant breached the tenancy agreement and that the Landlord is entitled to compensation. Given the utility bills setting out the water costs I find that the Landlord is entitled to the costs of **\$153.81**. As the Landlord did not provide the bills for the estimated water costs I dismiss this claim with leave to reapply. As the Landlord's application has been primarily successful I find that the Landlord is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$3,953.81**. Deducting the security deposit of **\$925.00** plus zero interests leaves **\$3,028.81** owed by the Tenant to the Landlord.

As the security deposit has been dealt with I dismiss the Tenant's claim for its return.

It is noted that near the end of the hearing and immediately after informing the Tenant that the Notice was found to be valid, the Tenant informed the Arbitrator that the Tenant felt disrespected by the Arbitrator's use of the salutation "ma'am" when speaking to the Tenant. After being told that this salutation was used to show respect, the Tenant became upset and without notice disconnected from the hearing. The Landlord's claims for an order of possession, unpaid rent and costs of the water were heard after the Tenant left the hearing. The Landlord commented that they were also accused of being disrespectful by the Tenant despite their respectful ways towards the Tenant.

Conclusion

**I grant** an Order of Possession to the Landlord. The Tenant must be served with this **Order of Possession**. Should the Tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

**I order** that the Landlord retain the **deposit** and interest of \$925.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **\$3,028.81**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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 19, 2017

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Residential Tenancy Branch