



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding ANTHEM LYTTON ST. DEVELOPMENTS LP AND AWM-ALLIANCE REAL ESTATE GROUP  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR, FF, CNR, MNDC, OLC, PSF, RR

### Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- an order of possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to recover its filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed that the landlord served the tenant with the notice of hearing package via Canada Post Registered Mail on June 3, 2017. The tenant provided testimony that the landlord was served with the notice of hearing package via Canada Post Registered Mail. The landlord confirmed receipt of this package via Canada Post Registered Mail on May 31, 2017. The landlord submitted a documentary package which consists of the tenant's 22 pages of documentary evidence with a photograph of

the envelope. The tenant submitted 21 pages of documentary evidence. The tenant also stated that she submitted a 52 page documentary evidence package late on July 6, 2017 to the RTB and the landlord. The landlord disputed that he has not received the tenant's second documentary evidence package. The tenant was not able to provide sufficient supporting proof of service for the second documentary evidence package. I accept the undisputed affirmed evidence of both parties and find that both parties have been sufficiently served as per sections 90 of the Act with the notice of hearing package(s) and the initial documentary evidence packages of both parties. The tenant has stated that a second documentary evidence package was served in person on June 26, 2017. The landlord has disputed that no such package was received. The tenant was unable to provide any supporting evidence of service. I find that the tenant has failed to provide sufficient evidence of proof of service for the tenant's second documentary evidence package. The tenant's second documentary evidence package is excluded from consideration in this hearing.

#### Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to a monetary order for unpaid rent and recovery of the filing fee?

Is the tenant entitled to an order cancelling the 10 Day Notice?

Is the tenant entitled to recovery of the filing fee?

#### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

Both parties confirmed that the landlord served to the tenant a 10 Day Notice to End Tenancy for Unpaid Rent dated May 17, 2017. The landlord stated that the 10 Day Notice was served via posting on the rental unit door. The tenant argued that the 10 Day Notice was found inside of the rental unit stairs on May 18, 2017. Both parties confirmed that the 10 Day Notice sets out that the tenant failed to pay \$3,449.80 that was due on May 1, 2017 and an effective end of tenancy date of May 23, 2017. Both parties confirmed that the tenant has paid \$620.00 making the current arrears \$2,829.80 as claimed by the landlord. The tenant provided undisputed affirmed testimony that she has not paid the arrears as claimed by the landlord due largely to costs incurred over a dispute over deficient appliances (washer, dryer and dishwasher).

The tenant also seeks a monetary claim of \$2,100.00 which consists of:

\$1,820.00	Recovery of laundry costs (7 months, October 2015-April 2016)
\$455.00	Recovery of laundry costs, Duvets (cleaning)
\$100.00	Recovery of Filing Fee

The tenant provided affirmed testimony that she suffered a loss of use of the washer, dryer and dishwasher due to deficient appliances for a 7 month period between October 2015 and April 2016. The tenant stated that laundry was included with her tenancy agreement and that the landlord has been negligent in maintaining the appliances and responding to the appliance deficiencies. The tenant stated as a result she has had to do her laundry at a coin operated laundry store over the 7 month period. The tenant relies upon a hand written spreadsheet detailing the costs that she has incurred. The landlord has disputed the tenant's claims stating that they took over as landlords in January of 2016 and that each issue reported by the tenant has been addressed in a prompt manner. The landlord detailed that they have had service technicians attend and inspect the reported issues who discovered no problems. The landlord stated that in an effort to deal with the tenant's continuous complaints a new washer/dryer was purchased, but that the tenant complained that it was too small. The landlord in an effort to resolve this replaced it with an existing machine from a different rental unit. The landlord stated that the tenant has only suffered a total loss of use of 7 days for the washer/dryer.

### Analysis

Section 26(1) of the Act sets out:

A tenant must pay rent when it is due under the tenancy agreement....unless the tenant has a right under this Act to deduct all or a portion of the rent.

The tenant did not provide evidence that she was entitled to deduct amounts for emergency repairs that she had conducted (pursuant to subsection 33(3)) or as a result of a prior order from the Residential Tenancy Branch.

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

The landlord testified that the tenant failed to pay rent of \$2,829.80 that was due on May 1, 2017 as a result of rental arrears. The tenant admitted that she did not pay rent as claimed by the landlord and has confirmed the arrears as listed by the landlord.

As the tenant has failed to pay her rent in full when due, I find that the 10 Day Notice issued May 17, 2017 is valid and dismiss the tenant's application to cancel the 10 Day Notice without leave to reapply. As the tenant's application to cancel the 10 Day Notice is dismissed, the landlord was entitled to possession of the rental unit on 23 January 2015, the effective date of the 10 Day Notice. As this date has now passed, the landlord is entitled to an order of possession effective two days after it is served upon the tenant(s).

The tenant admitted that she has not paid rental arrears as claimed by the landlord. I find that the landlord is entitled \$2,829.80.

The landlord having been successful is also entitled to recovery of the \$100.00 filing fee.

As the tenancy is at an end, I decline to make any orders regarding the tenant's request for an order for the landlord to comply (OLC), a request for the landlord to provide services or facilities agreed upon, but not provided (PSF) and a request to reduce rent for services of facilities not provided (RR).

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

As for the tenant's monetary claim, I find that the tenant has failed. The onus or burden of proof lies with the party who is making the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support their claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails. In this case, the landlord has disputed the tenant's claim. The tenant has relied upon her direct testimony as well as handwritten note detailing her costs. A review shows that

the tenant has referenced a laundry schedule from February 2005, April 2007, September 2014 and November 2015 and shows that the tenant relies upon an estimated cost twice a week, every two weeks for her laundry and duvet cleaning. The tenant has failed to provide sufficient evidence of deficient appliances (washer/dryer) or that the tenant suffered a loss of use for the 7 month period between October 2015 and April 2016. This is contradicted by the landlord's direct testimony that the tenant has only suffered a loss of use of 7 days, which the landlord argues is an acceptable time frame as a result of the tenant's complaints. The tenant has not provided any actual proof of an amount paid for these laundry costs. I find on a balance of probabilities that I prefer the evidence of the landlord over that of the tenant. As such, I find that the tenant has failed to provide sufficient evidence to satisfy me of her claim. The tenant's monetary claim is dismissed.

### Conclusion

The tenant's application to cancel the 10 Day Notice is dismissed.  
The tenant's monetary claim is dismissed.

The landlord is granted an order of possession.  
The landlord is granted a monetary order for \$2,929.80.

These orders must be served upon the tenant. Should the tenant fail to comply with the orders, the orders may be filed in the Supreme Court of British Columbia and enforced as an order of those courts.

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: July 11, 2017

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Residential Tenancy Branch