



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, DRI, FF, MNDC, MNSD, O, OLC, PSF, RR

### Introduction

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order to cancel the one month Notice to End Tenancy for cause
- b. An order disputing a rent increase that does not comply with an increase permitted by the Regulations
- c. A monetary order in the sum of \$10,000
- d. An order for the return of the security deposit or pet damage deposit
- e. An order that the landlord comply with the Act, Regulations and/or tenancy agreement
- f. An order that the landlord provide services or facilities required by the tenancy agreement or law
- g. An order to reduce rent for repairs, services or facilities agreed upon but not provided
- h. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was served on the landlord by mailing, by registered mail to where the landlord resides. The landlord acknowledged receipt of the documents.

### Preliminary Matter:

On June 6, 2017 the landlord obtained an Order of Possession and a monetary order for non-payment of rent. On June 21, 2017 the landlord obtained a Writ of Possession

from the Supreme Court of British Columbia. The Bailiff was hired and many of the Tenant's belongings were put into storage. The tenant vacated the rental unit on or about June 28, 2017.

The tenant stated that I should consider this as a claim for compensation only. As a result I dismissed the following claims without leave to re-apply as they are moot and no longer relevant.

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One of the fundamental principles of our legal system is that the applicant must give the respondent sufficient notice of the claims being made to allow the respondent an opportunity to defend themselves. The details of dispute state: "I would like lost wages damage deposit and rent or rent difference." I determine those were the only claims I could consider in this hearing.

At the end of August the tenant filed documents with the Branch including a large number of digital photographs to support a claim for damage to his belongings. A claim for damage to his belongings has not been properly identified in the Application for Dispute Resolution. As a result I determined it was not appropriate to consider that claim. This determination does not prevent the tenant from filing another application to recover compensation for damage to his belongings should he chose. I have not made any determination on the merits with regard to this issue.. The tenant's documents also included text messages with his boss relating to him missing work.

#### Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to a monetary order and if so how much?
- b. Whether the tenant is entitled to an order for the return of the security deposit and pet damage deposit?
- c. Whether the tenant is entitled to recover the cost of the filing fee?

### Background and Evidence

The parties entered into a one year fixed term tenancy agreement that provided that the tenancy would start on March 1, 2017 and end on February 28, 2018. The tenant was \$1200 per month. The tenancy agreement provided that the tenants paid a security deposit of \$600 on February 28, 2017. The tenant also testified he paid a pet damage deposit of \$400 but that was not identified in the tenancy agreement.

The tenant testified that he was evicted because the rental unit was an illegal suite and the Municipality forced the landlord to close the suite. He failed to present evidence to support this allegation. He testified the evidence was in the boxes the Bailiff had put into storage and he has not been able to regain those boxes because he cannot pay the bailiff charges.

The tenant testified he lost work because he had to deal with finding a new place to live. He has found a new place to live but the rent is \$1500 per month (\$300 more per month than what he was previously paying).

On June 6, 2017 the landlord obtained an Order of Possession and a monetary order in the sum of \$400 for non-payment of rent. On June 21, 2017 the landlord obtained a Writ of Possession from the Supreme Court of British Columbia. The Bailiff was hired and many of the Tenant's belongings were put into storage. The tenant vacated the rental unit on or about June 28, 2017.

### Analysis:

Section 7 of the Act states as follows:

#### **Liability for not complying with this Act or a tenancy agreement**

7 (1) if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim to establish the following:

- a. Proof that the damage or loss exists
- b. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
- c. Verification of the Actual amount required to compensate for loss or to rectify the damage
- d. Proof that the claimant followed section 7(2) of the Act by doing whatever is reasonable to minimize the damage or loss

With respect to each of the Tenants claims I find as follows:

- a. I dismissed the tenant's claims for loss wages without liberty to re-apply. The tenant failed to present evidence to quantify his loss. Further, I determined the landlord did not breach the Act or tenancy agreement. The tenant failed to pay the rent on time. The landlord had the legal right to obtain an Order of Possession and a Writ of Possession. Further, loss of wages is not a foreseeable claim. There is no basis for this claim and as a result this claim is dismissed without liberty to re-apply.
- b. The tenant sought an order for the return of his security deposit and pet damage deposit. The Residential Tenancy Act provides that a landlord must return the security deposit plus interest to the tenants **within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing** unless the parties have agreed in writing that the landlord can retain the security deposit, the landlord already has a monetary order against the tenants or the landlord files an Application for Dispute Resolution within that 15 day period. It further provides that if the landlord fails to do this the tenant is entitled to an order for double the security deposit. The tenant testified he has not provided the landlord with his forwarding address in writing. As a result I dismissed this claim. The tenant has liberty to re-apply after he provides the landlord with his forwarding address in writing and complies with this section.
- c. The tenant sought a monetary order for the rent difference he will be paying between the rent for the rental unit which is the subject matter of this proceeding (\$1200) and the rent he will be paying in his new rental unit (\$1500). The tenant failed to present evidence of the rent he will be paying in his new rental unit.

Further, the tenant failed to prove the landlord violated the Act or tenancy agreement. The landlord obtained an Order of Possession and a monetary order based on non-payment of rent. The landlord obtained a Writ of Possession from the Supreme Court of British Columbia based on this Order of Possession. The landlord had the legal right to do what they did and has not obtained the Order of Possession by violating the Act. This claim is dismissed without liberty to re-apply.

I determined it was not appropriate to delay this disposition of this case because the tenant testified he had documents in storage that would show the landlord is at fault for having an illegal suite. The tenant filed the within claim and made no effort to withdraw it. Further, he did not request an adjournment. The tenant failed to identify what documents he was referring to or how those documents might affect the outcome.

Conclusion:

In summary I dismissed the tenant's application for a monetary order for lost wages, a rent difference and the cost of the filing fee without liberty to re-apply. I dismissed the tenant's claim for the return of the security deposit and pet damage deposit with liberty to re-apply.

**This decision is final and binding on the parties.**

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: September 07, 2017

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Residential Tenancy Branch