



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR, OPC, MNR, MND, MNDC, MNSD, FF;    DRI, CNR, CNC, MNDC, MNSD, OLC, O, FF

### Introduction

This hearing dealt with the landlord's application against both tenants pursuant to the *Residential Tenancy Act* ("Act") for:

- an Order of Possession for unpaid rent and for cause, pursuant to section 55;
- a monetary order for unpaid rent, for damage to the rental unit, and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee for his application, pursuant to section 72.

This hearing also dealt with tenant SR's ("tenant") cross-application pursuant to the *Act* for:

- an order regarding a disputed additional rent increase, pursuant to section 43;
- cancellation of the landlord's 10 Day Notice for Unpaid Rent or Utilities, dated August 3, 2017 ("10 Day Notice"), pursuant to section 46;
- cancellation of the landlord's 1 Month Notice for Cause, dated July 21, 2017 ("1 Month Notice"), pursuant to section 47;
- a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement, pursuant to section 67;
- authorization to obtain a return of the security deposit, pursuant to section 38;
- an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement, pursuant to section 62;
- other unspecified remedies; and
- authorization to recover the filing fee for his application, pursuant to section 72.

One of two tenants, “tenant JG,” did not attend this hearing, which lasted approximately 74 minutes. The landlord and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties confirmed receipt of the other party’s application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that both parties were duly served with the other party’s application.

### Issues to be Decided

Should the landlord’s 10 Day Notice or 1 Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

Is either party entitled to a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the landlord entitled to a monetary order for unpaid rent or for damage to the rental unit?

Is the landlord entitled to retain the tenants’ security deposit?

Is the tenant entitled to an order regarding a disputed additional rent increase?

Is the tenant entitled to obtain a return of the security deposit?

Is the tenant entitled to an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement?

Is the tenant entitled to other unspecified remedies?

Is either party entitled to recover the filing fee for their application?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of both parties’ claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on July 9, 2013. Monthly rent in the amount of \$2,600.00 was payable on the first day of each month. A security deposit of \$1,150.00 was paid by the tenant and the landlord continues to retain this deposit. A written tenancy agreement was signed by both parties. No move-in condition inspection report was completed for this tenancy. At the time of this hearing, the tenant had not yet fully vacated the rental unit or returned the keys to the landlord but was planning to do so by 1:00 p.m. on the date of this hearing after the hearing was completed.

The landlord seeks an order of possession. The landlord also seeks \$7,000.00 to \$8,000.00 for carpet replacement and \$466.99 for lawn repair. The landlord further seeks to recover the \$100.00 filing fee paid for his application.

The tenant seeks compensation totalling \$9,410.99 from the landlord. He also seeks to recover the \$100.00 application filing fee.

The tenant seeks \$7,200.00 for additional rent paid pursuant to an alleged illegal rent increase of \$300.00 per month for a 24-month period from July 2015 to July 2017. Both parties agreed that the tenant did not receive a Notice of Rent Increase ("NRI") on the approved Residential Tenancy Branch ("RTB") form, but verbally agreed to a rent increase from \$2,300.00, implemented at the beginning of this tenancy, to \$2,600.00 beginning on July 1, 2015, for which the tenant said he was not forced to agree.

The tenant also seeks \$810.99 to replace a dishwasher and \$250.00 to replace a washer and dryer at the rental unit, because he said that the appliances stopped working and the landlord failed to repair or replace them. The tenant provided a receipt for the dishwasher but no receipt for the washer and dryer because he claimed that cash was paid for the appliances which were purchased through an online website. He said that he told the landlord about requiring a dishwasher replacement after he tried unsuccessfully to have the dishwasher fixed by a technician that he called himself. He stated that he did not tell the landlord about the washer and dryer needing replacement because of previous experience when the landlord refused to fix anything unless it was urgent.

The landlord denies being told about the above repairs or replacements, indicating that he could have repaired or replaced the appliances if the tenant notified him, instead of replacing the appliances himself.

#### Settlement of Some Issues

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision and orders. During the hearing, the parties discussed the issues between them, turned their minds to compromise and achieved a resolution of portions of their dispute.

Both parties agreed to the following final and binding settlement of portions of their dispute at this time:

1. Both parties agreed that this tenancy will end by 1:00 p.m. on October 10, 2017, by which time the tenant and any other occupants will have vacated the rental unit;
  - a. Both parties agreed to conduct a move-out condition inspection and complete an RTB move-out condition inspection report on the approved form, at 1:00 p.m. on October 10, 2017
  - b. The tenant agreed to provide the landlord with a blank copy of an approved RTB move-out condition inspection report for both parties to complete;
  - c. The tenant agreed to return the keys to the rental unit to the landlord at 1:00 p.m. on October 10, 2017;
2. The tenant agreed to pay the landlord \$7,800.00 for unpaid rent for the period from August 1 to October 31, 2017.

The tenant agreed to pay the landlord \$7,800.00 but was unsure of the payment date, indicating it would take approximately 3 years to pay the above amount, so he requested that I provide the landlord with a monetary order instead,. Accordingly, I have offset the tenants' security deposit of \$1,150.00 against the above amount, as per section 72 of the *Act*. Therefore, I allow the landlord to retain the tenants' entire security deposit of \$1,150.00 and I issue a monetary order for the remainder of \$6,650.00 against the tenant only, since tenant JG did not appear at this hearing to agree to this settlement.

I issue an order of possession against the tenant only, since tenant JG did not appear at this hearing to agree to this settlement.

I made a decision regarding the remainder of both parties' applications because the parties were unable to reach a settlement on those issues.

### Analysis

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the applicant must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

### Landlord's Application

I dismiss the landlord's application for \$466.99 for lawn repair and \$7,000.00 to \$8,000.00 for carpet replacement, with leave to reapply. These claims are premature since the tenancy has not ended. The landlord confirmed that he does not know the full extent of the damage since the parties have not yet conducted a move-out condition inspection or report as of the time of this hearing but intend to do so after the hearing.

I dismiss the landlord's claim to recover the \$100.00 application filing fee, as the landlord settled a portion of his application and was unsuccessful in pursuing the remainder.

### Tenant's Application

I dismiss the tenant's application to recover \$7,200.00 in rent paid to the landlord pursuant to a rent increase from \$2,300.00 to \$2,600.00, implemented in July 2015. I find that the tenant agreed to pay the above amount for a two year period from July 2015 to July 2017. Although this amount is above the allowable *Regulation* amount for 2015 and the tenant did not agree to it in writing, I find that the tenant failed to show that he was under any duress when agreeing to it. He said that he was unaware of the law until he filed his application, but ignorance of the law is no excuse. The tenant's actions confirm that he did not dispute the rent increase by approaching the landlord and he did not file an application at the RTB until two years later in July 2017, when he had already paid the new rent amount so I find that he waived his rights to recover the overpayment.

I dismiss the tenant's application for purchasing a washer and dryer for \$250.00 and purchasing a dishwasher for \$810.99. The tenant failed to provide a receipt for the \$250.00 cost and did not inform the landlord about the repair or replacement, as required. The tenant's receipt for \$810.99 does not indicate that it is for a dishwasher, it just states "recall amount."

As I have already offset the tenants' security deposit against the landlord's monetary order, this portion of the tenant's application is dismissed without leave to reapply.

Since the tenant is intending to vacate the rental unit after the hearing is over, I dismiss his application for the landlord to comply with the *Act*, *Regulation* or tenancy agreement, without leave to reapply.

Since the tenant did not provide any evidence regarding his claim for "other" remedies, I dismiss this claim without leave to reapply.

As the tenant settled a portion of his application and was unsuccessful in the remainder, I find that he is not entitled to recover the \$100.00 filing fee paid for his application.

### Conclusion

To give effect to the settlement reached between the parties and as advised to both parties during the hearing, I issue the attached Order of Possession to be used by the landlord **only** if the tenant and any other occupants fail to vacate the rental premises by 1:00 p.m. on October 10, 2017. The tenant must be served with this Order in the event that the tenant and any other occupants fail to vacate the rental premises by 1:00 p.m. on October 10, 2017. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I order the landlord to retain the tenants' entire security deposit of \$1,150.00 in partial satisfaction of the monetary award.

I issue a monetary Order in the landlord's favour in the amount of \$6,650.00. The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The landlord's application to recover the \$100.00 application filing fee is dismissed without leave to reapply.

The landlord's application for a monetary order of \$466.99 for lawn repair and \$7,000.00 to \$8,000.00 for carpet replacement, is dismissed with leave to reapply.

The tenant's entire application is dismissed without leave to reapply.

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: October 10, 2017

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Residential Tenancy Branch