



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

**Landlord:** OPR MNRL-S FFL

**Tenant:** CNR, ERP, MNDCT, PSF RP

### Introduction

This hearing dealt with an application by both parties pursuant to the *Residential Tenancy Act* ("Act").

The landlord sought:

- an Order of Possession for unpaid rent pursuant to sections 46 and 55;
- a Monetary Order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant sought:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- an order to the landlord to make repairs and emergency repairs to the rental unit pursuant to section 33; and
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;

The landlord's agent, the landlord's building manager and the tenant attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The landlord's agent N.C. (the landlord) stated that she would be speaking on behalf of the landlords in this matter.

The tenant had an advocate to assist her with her oral submissions.

While I have turned my mind to all the documentary evidence, including the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The landlord testified that the Landlord's Application for Dispute Resolution (the Landlord's Application), was sent to the tenant by way of registered mail on January 23, 2018. The tenant confirmed that they received this package. In accordance with section 88 of the *Act*, I find the tenant was duly served with the Landlord's Application.

The landlord testified that their evidence was also sent to the tenant by way of registered mail in a separate package on January 23, 2018. The landlord provided a copy of the Canada Post Tracking Number to confirm this registered mailing. The tenant testified that they inquired with Canada Post about a second package, when picking up the Landlord's Application, and that there was no other package available. The tenant testified that they have not received the landlord's evidence.

As the tenant has disputed service of the landlord's evidence, I will only consider documents that are signed by both parties such as the tenancy agreement and Condition Inspection Report as well as the correspondence provided to the landlord from the tenant which the landlord and tenant both included in their evidence. The remainder of the landlord's evidence is not accepted for consideration due to the service being disputed by the tenant.

The landlord acknowledged receiving the Tenant's Application for Dispute Resolution (the Tenant's Application) which was left in the mail slot at the landlord's office. In accordance with section 71 of the *Act*, which allows an Arbitrator to consider a document served if not served in accordance with the *Act*, I find the landlord was duly served with the Tenants' Application.

The tenant testified that they provided their evidence to the landlord with the Tenant's Application. The landlord disputed this and stated that they only received the Tenant's Application through the mail slot. As the landlord has disputed service of the tenant's evidence, the tenants' evidence is not accepted for consideration other than the 10 Day Notice as it was provided to the tenant from the landlord.

The tenant confirmed that they received the 10 Day Notice on December 21, 2017. In accordance with section 88 the *Act*, I find the tenant was duly served with the 10 Day Notice.

At the outset of the hearing the landlord sought to increase their monetary claim from \$2,350.00 to \$3,925.00 to reflect the tenant's failure to pay \$1,550.00 in monthly rent for February 2018, the additional month of unpaid rent waiting for this hearing as well as a

\$25.00 service fee charged by the landlord's financial institution for unsuccessful preauthorized rent payment that the tenant put a stop payment on. Residential Tenancy Rule of Procedure 4.2 states that in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

I allow the amendment for February 2018 unpaid rent as this was clearly rent that the tenant would have known about and resulted since the landlord submitted their Landlord's Application. I do not allow the amendment for the \$25.00 service fee charged by the landlord's financial institution as the tenant did not know that the landlord would be requesting recovery of this service fee and I find that they would be prejudiced by this amendment.

Issue(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Is the landlord entitled to a monetary award for unpaid rent?

Is the landlord entitled to authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested?

Is the landlord entitled to authorization to recover the filing fee for this application from the tenant?

Is the tenant entitled to a monetary award for compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Is the tenant entitled to an order to the landlord to make repairs and emergency repairs to the rental unit?

Is the tenant entitled to an order to the landlord to provide services or facilities required by law

Background and Evidence

The landlord gave written evidence that this tenancy began on December 15, 2017, with a monthly rent of \$1,550.00 due on the first day of the month. The landlord testified that they retain a security deposit in the amount of \$775.00.

A copy of the signed 10 Day Notice, dated December 21, 2017, identifying \$775.00 in unpaid rent owing for this tenancy with an effective date of January 08, 2018, was included in the tenant's evidence.

The landlord and the tenant both provided copies of multiple correspondences exchanged between the tenant and the landlord regarding the tenant's claim of a lack of heat in the rental unit, the tenant advising the landlord that the January 2018 rent payment will be returned as Non-Sufficient Funds, a list of repairs requested by the tenant including insufficient heat and hot water, Broken toilet pump, closet doors which do not open and close properly, replacement of shower head, repair patio doors and a window needing resealing as well as broken window locks.

The landlord's correspondence to the tenant, which was provided by both parties, indicates dates when repairs requested by the tenant were addressed including the plumber confirming that the heat and hot water are in good working condition as of January 16, 2018, when they attended the rental unit.

The landlord testified that the tenant has not paid any rent since moving into the rental unit on December 15, 2017. The landlord submitted that pro-rated rent for December 2017 in the amount of \$775.00, \$1,550.00 for January 2018 unpaid rent and \$1,550.00 in unpaid rent for February 2018 are presently owing from the tenant as well as a \$25.00 service fee for an unsuccessful pre-authorized rent payment (NSF) for January 2018.

The landlord submitted that the tenant's claims of insufficient heat, insufficient hot water and other repairs are not true and that the landlord has either confirmed that items are in working order or that the items were fixed before the tenant moved into the unit. The landlord testified that they have spent \$11,000.00 in upgrades to the rental unit prior to the tenant moving in. The landlord submitted that the plumber attended the unit on multiple occasions in December 2017 and in January 2018 and did not find any issues with the heat or hot water. The landlord testified that no other rental unit in the building has complained about a lack of hot water and the plumber had actually raised the temperature of the water for the building in anticipation of the winter season prior to the tenant moving into the rental unit.

The tenant testified that they have not had hot water since they moved into the rental unit and kept a log but confirmed that they did not submit their log into evidence for consideration. The tenant confirmed that the plumber has attended the rental unit and that the hot water worked when the plumber attended the rental unit. The tenant

submitted that when the weather got colder they continued to experience issues with hot water.

The tenant stated that she has tried to work on a payment plan with the landlord but confirmed that confirmed that she has not made or attempted to make any payment towards the amount owing on the 10 Day Notice or any unpaid rent accrued since.

On the Tenant's Application, the tenant has indicated that their monetary claim of \$3,696.50 is for moving from the rental unit as it is unsuitable due to required repairs.

### 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. In this case, to prove a loss, the tenant 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 landlord 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 tenants followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I find that the tenant has not submitted any evidence to demonstrate that they have incurred any type of loss due to their claim of repairs that are required to the rental unit. I further find that the landlord and the tenant have both provided evidence that the landlord has responded to all of the tenant's requests in a reasonable timeframe. I find the tenant has confirmed in her testimony that when the plumber attended the rental unit, the hot water was in working order and that there is no proof provided of the hot water or heat being insufficient or that the rental unit is unsuitable for occupation.

I find the tenant is requesting compensation to move out of the rental unit. I find I cannot consider compensation for expenses that have not been incurred, to move from a rental unit for which she has not paid any rent, for repair issues that she has not proven.

I find the tenant has not demonstrated that she has suffered any damage or loss due to the actions or neglect of the landlord, and for this reason, I dismiss the tenant's monetary claim, without leave to reapply.

Section 26 of the *Act* requires a tenant to pay rent to the landlord regardless of whether the landlord complies with the *Act*, regulations or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the *Act*.

Section 46 of the *Act* requires that upon receipt of a 10 Day Notice, the tenant must, within five days, either pay the full amount of the arrears as indicated on the 10 Day Notice or dispute the 10 Day Notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. As I have found the 10 Day Notice was duly served to the tenant on December 21, 2017, I find the tenant had until December 26, 2017, to dispute the 10 Day Notice or to pay the full amount of the arrears. As the Residential Tenancy Branch was closed on December 26, 2017, the tenant had until the next business day, December 27, 2017, to dispute the 10 Day Notice.

I find the tenant submitted their Application on January 03, 2018, which is not within the five day time limit permitted under section 46 (4) the *Act*.

Based on the landlord's evidence and the testimony of both parties, I find the tenant failed to pay any rent within five days of receiving the 10 Day Notice and did not make an application pursuant to section 46(4) of the *Act* within the same timeframe. In accordance with section 46(5) of the *Act*, due to the failure of the tenant to take either of these actions within five days, I find the tenant is conclusively presumed to have accepted the end of this tenancy on January 08, 2018, the effective date on the 10 Day Notice. In this case, the tenant and anyone on the premises were required to vacate the premises by January 08, 2018. As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession.

As this tenancy is ending I find that the remainder of the tenant's claims for repairs, emergency repairs and services to be provided are no longer applicable and for this reason I dismiss them, without leave to reapply.

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.

Section 7(c) of the *Residential Tenancy Regulations* allows for a landlord to recover a service fee charged by their financial institution.

Based on the evidence and the testimony of both parties, I find the landlord is entitled to a monetary award of \$3,900.00 for the half a month's unpaid rent for December 2017 as

well as the unpaid rent for January 2018, February 2018 and a service fee for January 2018 charged by the landlord's financial institution.

Pursuant to section 72 of the *Act*, I allow the landlord to retain the tenant's security deposit plus applicable interest in partial satisfaction of the monetary award. No interest is payable over this period. As the landlord has been successful in this application, I also allow them to recover their \$100.00 filing fee from the tenant.

#### Conclusion

I dismiss the tenant's Application in its entirety, without leave to reapply.

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant(s). Should the tenants or any occupant on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to section 67 of the *Act*, I grant a monetary Order in the landlord's favour under the following terms, which allows the landlord to recover unpaid rent, recover a

service fee for January 2018 NSF rent, to retain the tenant's security deposit and to recover the filing fee for this Application:

| <b>Item</b>                       | <b>Amount</b>     |
|-----------------------------------|-------------------|
| Unpaid December 15 – 31 2017 Rent | \$775.00          |
| Unpaid January 2018 Rent          | 1,550.00          |
| Service Fee for January 2018 NSF  | 25.00             |
| Unpaid February 2018 Rent         | 1,550.00          |
| Less Security Deposit             | -775.00           |
| Filing Fee for this Application   | 100.00            |
| <b>Total Monetary Order</b>       | <b>\$3,225.00</b> |

The landlord is provided with this Order in the above terms and the tenant(s) must be served with this Order as soon as possible. Should the tenant(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: February 19, 2018

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Residential Tenancy Branch