



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes CNR, OPR, MNR, MDSD & FF

The Application for Dispute Resolution filed by the landlord makes the following claims:

- a. An Order for Possession for non-payment of rent
- b. A monetary order in the sum of \$2906 for unpaid rent and damages
- c. An order to recover the cost of the filing fee

The Application for Dispute Resolution filed by the Tenant makes the following claims:

- a. An order to cancel the 10 day Notice to End Tenancy dated December 5, 2017
- b. A monetary order in the sum of \$6003
- c. An order that the tenant 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. The parties acknowledged they had received the documents of the other party.

I find that the 10 day Notice to End Tenancy was served on the Tenants by leaving it in the mailbox on December 5, 2017. Further I find that the Application for Dispute Resolution/Notice of Hearing and Amendments filed by each party was sufficiently served on the other. With respect to each of the applicant's claims I find as follows:

### Issue(s) to be Decided:

The issues to be decided are as follows:

- a. Whether the landlord is entitled to an Order for Possession?
- b. Whether the landlord is entitled to A Monetary Order and if so how much?
- c. Whether the landlord is entitled to recover the cost of the filing fee?
- d. Whether the tenants are entitled to an order cancelling the 10 day Notice to End Tenancy dated December 5, 2017?
- e. Whether the tenants are entitled to a monetary order and if so how much?
- f. Whether the tenants are entitled to recover the cost of the filing fee?

Background and Evidence:

The tenancy began on January 15, 2017. The rent was \$1200 per month payable on the last day of the preceding month. The tenant paid a security deposit of \$500 at the start of the tenancy.

The landlord testified the tenants failed to pay the full rent for December and the sum of \$600 remains outstanding. The tenant does not dispute this. The landlord further testified the tenant failed to pay the rent for January and the sum of \$1200 remains outstanding. The tenant disputes this. He testified he left the rent in cash in a basket as he was instructed to do so by the landlord. The tenants have paid half of the rent for February.

They testified they are vacating the rental unit on February 15, 2018.

Landlord's Claim:

After carefully considering all of the evidence I determined that the landlord has established sufficient cause to end the tenancy. I determined the tenant owes the sum of \$600 in rent for December 2017. This is not disputed by the Tenants. The landlord has used the approved government form. As a result I dismissed the tenants' application to cancel the 10 day Notice to End Tenancy. The tenancy shall come to an end.

Order for Possession:

The Residential Tenancy Act provides that where an arbitrator has dismissed a tenant's application to cancel a Notice to End Tenancy, the arbitrator must grant an Order for Possession. The tenant testified he was vacating the rental unit on February 15, 2018. As a result I granted the landlord an Order for Possession forthwith on receipt of this Order.

The tenants must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

Analysis - Monetary Order and Cost of Filing fee:

With regard to each of the landlords' claims I find as follows:

- a. I determined the tenants failed to pay the rent for December 2017 and the sum of \$600 remains outstanding.
- b. I dismissed the landlord's claim of \$1200 for non payment of rent for January 2018. There was an exchange of text messages in the evening of January 1, 2018. The landlord asked the tenant to leave the rent in a basket in front of the door of the downstairs tenant. This basket is exposed to the outside world. The tenant responded saying let me know when you are here so he could come out. The tenant testified he put the rent in the basket as instructed. The landlord testified he came down but the rent was not there. He texted the tenant saying he was heading out and would be back later to pick it up. There are no further texts between the parties until January 3, 2017 when the landlord texted the rent was overdue. The tenant responded to the text a couple of hours later saying he had placed the rent in the basket as instructed.

The landlord set the terms as to how the rent was to be paid. The rent was to be paid in cash. On January 1, 2018 the landlord told the tenant to put the rent in the basket (that was accessible to the outside world). It would have been easy for the landlord to meet the tenant in person and receive the rent. The landlord did not facilitate an in person meeting. The landlord set the terms of the method of how it was to be paid. The tenant testified he paid it as instructed and did not return later to retrieve the rent. I determined the landlord failed to prove the tenant did not pay the rent as the landlord had instructed and as a result this claim is dismissed.

- c. The landlord claim the sum of \$899 for the cost to replace a storage shed that had burned down in early November 2017. The shed was being used by the tenant as a chicken coop and the tenants were heating it through an electric lamp. The tenant disputes this claim alleging the fire was caused by arson. Neither party presented sufficient evidence to prove it was caused by arson. I determined based on the evidence presented the fire was caused by the negligence of the tenant when attempting to heat the shed. The landlord claimed \$899 based on estimates for the cost of a new shed. The landlord acknowledged the shed was 15 years old and did not have a roof. After considering depreciation I determined the landlord is entitled to \$200 for this claim.
- d. I dismissed the claim for the additional cost of the electricity as the landlord failed to provide sufficient evidence to prove it.
- e. I dismissed the claim of \$25 for the cost of mailing as this claim relates to the cost of litigation.

In summary I determined the landlord has established a claim against the Tenants in the sum of \$800 plus \$100 for the cost of the filing fee for a total of \$900.

Tenants' Claim:

For the reasons setout above I dismissed the Tenants claim to cancel the 10 day Notice to End Tenancy and I granted an Order of Possession.

Tenants Application for a Monetary Order:

The tenants sought a monetary order in the sum of \$6003.75 particulars are as follows:

- The sum of \$4331.25 for being unable to access and fully utilize room
- The sum of \$1672.50 for disturbances, loss of privacy and loss of quiet enjoyment.

When asked how he arrived at the monetary amounts he testified it was a random number they picked.

The rental property is located on a farm and the house is old. The tenant gave the following evidence:

- The rental property is on 2 floors. It contains 3 bedrooms and a loft.
- He testified he could not access the attic because of a rant smell and attic was not completed.
- There is no flooring on the downstairs bedroom. The flooring is only plywood. Many of the light fixtures are not secure and many of the light switches do not have covers.
- The kitchen flooring is linoleum but there are many holes in it.
- There are kitchen cabinets sitting there and have not been installed.
- There are problems with the flooring on the stairs.
- The kitchen window needs repairs.

- A third party rents a garage located under the rental unit. He has access to the front door of the rental unit to turn the breaker back on if the breaker has cut the power.
- He works on his cars. The tenants have had their quiet enjoyment disturbed when he uses his grinding tools to fix his cars. On 8 to 9 occasions the third party has spray painted cars and their enjoyment of the property has been reduced. The 3<sup>rd</sup> party spends about 20 hours a week on the property.

The landlord gave the following evidence:

- The tenants viewed the rental unit prior to renting and were aware of its conditions.
- The complaints about the floor are unreasonable.
- The attic is not a bedroom
- The rent was based on the condition of the rental unit.
- This is an older farm house with its limitations.
- He addressed the tenants' complaints about the third party and talked to him about the painting and noise.
- The tenants seldom use the front entrance (which the 3<sup>rd</sup> party uses to re-set the breaker)

The Law:

Section 32 of the Residential Tenancy Act provides as follows:

**Landlord and tenant obligations to repair and maintain**

**32** (1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

...

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement

Analysis:

After carefully considering all of the evidence presented at the hearing I determined the tenants are entitled to compensation but the amount claim is not reasonable and not supported by the evidence based on the following:

The tenants failed to present sufficient evidence of particulars of their claim including the dates and times of the disturbances, the length and intensity of the disturbances and how the condition of the rental unit has adversely affected their enjoyment of the property.

- Section 32(2) of the Act provides that an arbitrator is to consider the "age, character and location of the rental unit" to determine whether it is suitable for occupation by a tenant.
- If the landlord has breached a term of the tenancy agreement the tenants have an obligation to mitigate their loss and this includes an obligation to bring a claim in a timely manner.

- I determined parts of the rental unit needed to be repaired to meet the standard of section 32 of the Act. The landlord failed to make the repairs in a timely fashion. After considering all of the evidence I determined the tenants are entitled to compensation in the sum of \$500 for the reduced value of the tenancy and \$200 for the breach of the covenant of quiet enjoyment caused by the noise which occurred as a result of work done by the 3<sup>rd</sup> party on his cars and the loss of privacy. I accept the submission of that this type of noise can be significantly disrupting. However, the evidence of the timing, length and intensity of the disturbances was general in nature and lacked sufficient particularity to warrant a higher award.

In summary I determined the Tenants have established a claim against the landlord in the sum of \$700 plus \$100 for the cost of the filing fee for a total of \$800.

Conclusion:

I determined the landlord has established a claim against the tenants in the sum of \$900. I determined the tenants have established a claim against the landlord in the sum of \$800. After setting off one claim against that of the other I ordered that the Tenants pay to the landlord the sum of \$100.

**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: February 17, 2018

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Residential Tenancy Branch