



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding EQUITABLE REAL ESTATE INVESTMENT CORPORATION LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      CNC FFT LAT OLC RP FFL MNDL-S OPC

### **Introduction**

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlord requested:

- an Order of Possession for cause pursuant to section 55;
- a monetary order for compensation for loss or other money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant requested:

- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72;
- an order to the landlord to make repairs to the rental unit pursuant to section 33;
- cancellation of the landlord’s 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47; and
- an order to allow the tenant to change the locks to the rental unit pursuant to section 70.

PB appeared as agent for the landlord in this hearing, and had full authority to do so. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

Both parties confirmed receipt of each other's applications and evidentiary materials. In accordance with sections 88 and 89 of the *Act*, I find both parties duly served with each other's applications and evidentiary materials.

The tenant confirmed that the 1 Month Notice was posted on his door on July 24, 2018. In accordance with sections 88 and 90 of the *Act*, the tenant is deemed to have been served the 1 Month Notice on July 27, 2018, 3 days after posting.

### **Issue(s) to be Decided**

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Are both parties entitled to recover the filing fees for their applications?

Is the landlord entitled to monetary compensation for damage and losses?

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

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

Is the tenant entitled to an order to allow the tenant to change the locks to the rental unit?

### **Background and Evidence**

This month-to-month tenancy began on June 1, 2010 with monthly rent currently set at \$1,118.00. The landlord collected a security deposit in the amount of \$440.00, which they still hold. The tenant continues to reside in the rental suite.

The landlord issued the tenant a notice to end tenancy on July 24, 2018 providing 6 grounds:

1. The tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk;
2. The tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
3. The tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety, or physical well-being of another occupant;
4. The tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to damage the landlord's property; and

5. Breach of a material term of the tenancy agreement that was not corrected within a reasonable amount of time after written notice to do so;
6. The tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site.

The landlord's agent provided testimony as well as written evidence providing several reasons for why they wished to end this tenancy. The main incident took place on February 11, 2018, which involved extensive water damage to several units in the building after the tenant left some clothes in the bathroom sink, which overflowed. The landlord provided further examples of the tenant's actions which raised concern with the landlord to the extent that they believe the tenant's judgement and actions are a risk to the landlord's property. The landlord testified that the tenant was issued a fire violation notice after improperly storing his barbecue, and the tenant has placed a drying rack on top of the kitchen sink, which caused damage to the faucet.

The tenant admitted in the hearing that he had placed clothes in the kitchen sink, but that he had returned on 3 occasions to check the clothes which he was bleaching. The tenant testified that he didn't know how he "overlooked water running", and that it was an accident. The tenant testified that the damage was not as extensive as the landlord had testified to, and that his requests for more detail were ignored. The tenant testified that he had only received the landlord's invoices after his lawyer had sent a letter to the landlord. The tenant testified that there was pre-existing issues with the plumbing in the building, and that could have attributed to the water damage.

The landlord submitted a monetary claim in the amount of \$3,540.60 as indicated in the table below for the losses suffered due to the February 11, 2018 incident:

<b>Item</b>	<b>Amount</b>
Leak Repairs	\$141.75
Electrical Repairs	458.85
Water Repairs	2,940.00
<b>Total Monetary Order Requested</b>	<b>\$3,540.60</b>

The landlord testified that the landlord had sent a copy of the invoices for the above losses to the tenant, but the tenant has not paid any of the invoices. The tenant admitted in the hearing that he has not paid any of the invoices, and that he did not have insurance coverage. The landlord provided copies of incident reports, photos, invoices, and statements in support of their claim. The tenant testified that the landlord

has not provided sufficient evidence to support that he was responsible for the above losses.

The tenant also filed an application for repairs to his unit, including a leaking radiator, to change the locks to his unit as he had lost his keys, and for the landlord to comply with the *Act*.

### **Analysis**

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. The tenant filed his application on August 2, 2018, 6 days after the date the tenant was considered deemed served the 1 Month Notice. As the tenant filed his application within the required period, and having issued a notice to end this tenancy, the landlord has the burden of proving he has cause to end the tenancy.

Section 32 (3) of the *Residential Tenancy Act* reads in part as follows:

*A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.*

The landlord provided undisputed, sworn testimony that the tenant had inadvertently left the faucet on in his suite, which was left unattended on February 11, 2018. Although I accept the testimony of the tenant that he had returned on several occasions to check his unit, I find that his decision had led to significant damage which resulted in a financial loss for the landlord, and the tenant did not compensate the landlord for the losses, nor did the tenant have insurance coverage to mitigate the level of financial loss.

I find that regardless of whether the incident was an accident or not, the tenant was neglectful, and I find the tenants actions resulted in damage to the rental unit, as well as the units below his. I find that the tenant failed to provide sufficient evidence to support that the water damage was due to the landlord's failure to maintain the rental unit in working order. I also find that the tenant failed to provide sufficient evidence to support that the landlord is claiming more than what the landlord had truly suffered due to the actions of the tenant. I find that the tenant dismissed the landlord's numerous concerns when the landlord attempted to warn the tenant that his actions could result in significant damage and loss for all parties. I find the tenant failed to abide by section

32(3) of the *Act* despite the fact that the tenant admitted his actions, intentional or not, had led to a monetary loss paid by the landlord.

I find that the actions of the tenant resulted in significant damage to the landlord's property. I find that the landlord has provided sufficient evidence to support that the tenant's actions have continuously put the landlord's property at risk, and the tenant has failed to provide assurance to the landlord that he would take action to avoid future incidents. I find that these events and behaviour described in this hearing justifies the ending of this tenancy on the grounds that the tenant has put the landlord's property at significant risk, and accordingly I dismiss the tenant's application to cancel the 1 Month Notice dated July 24, 2018.

**Section 55(1)** of the *Act* reads as follows:

- 55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if
- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
  - (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Based on my decision to dismiss the tenant's application for dispute resolution and pursuant to section 55(1) of the *Act*, I find that this tenancy ended on the effective date of the 1 Month Notice, August 31, 2018. I find that the 1 Month Notice complies with section 52 of the *Act*. As the effective date has passed, I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

I find that the landlord has provided sufficient evidence to support that they suffered a monetary loss in the amount of \$3,540.60 due to the tenant's actions. Although the tenant alleges that the landlord is fraudulently claiming for losses that did not occur due to the tenant's actions, I find that the landlord provided detailed evidence in support of what had taken place on February 11, 2018, which includes incident reports, invoices, correspondence, and photographs. I find the landlord's agent's testimony credible, and I find that it is due to the intentional and neglectful actions of the tenant that the landlord

suffered the monetary losses claimed. Accordingly, I find that the landlord is entitled to a monetary order in the amount of \$3,540.60 in satisfaction of the monetary loss suffered by the landlord due to the tenant's obligation under section 32(3) of the *Act* to repair the damage caused by the tenant's actions.

I find that the landlord's Application has merit and that the landlord is entitled to recover the fee for filing this Application.

The landlord continues to hold the tenant's security deposit totaling \$440.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's security deposit in partial satisfaction of the monetary claim.

I find that the tenant has failed to provide sufficient supporting evidence to support that the landlord had failed to comply with any section of the *Act*. I find that the tenant has not provided sufficient evidence to support that the landlord has failed to provide repairs as required, or as requested by the tenant. I also find that the tenant failed to provide sufficient evidence to support that the rental unit requires new locks. Accordingly, the remaining portions of the tenant's application are dismissed without leave to reapply.

As the tenant was not successful in his application, the tenant must bear the cost of the filing fee. This portion of his application is dismissed without leave to reapply.

### **Conclusion**

The tenant's entire application is dismissed with leave to reapply. I find that the landlord is entitled to an Order of Possession. I find that the landlord's 1 Month Notice is valid and effective as of August 31, 2018.

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

I allow the landlord to retain the tenant's security deposit in the amount of \$440.00 in partial satisfaction of the monetary claim.

I issue a Monetary Order in the landlord's favour under the following terms which allows the landlord to recover the filing fee for this application, and the losses associated with the tenant's actions.

Item	Amount
Leak Repairs	\$141.75
Electrical Repairs	458.85
Water Repairs	2,940.00
Filing Fee	100.00
Less Security Deposit	-440.00
<b>Total Monetary Order</b>	<b>\$3,200.60</b>

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 an Order 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: September 21, 2018

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Residential Tenancy Branch