



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNR, MNDC, PSF

### Introduction

This matter dealt with an application by the Tenants to cancel a Notice to End Tenancy for unpaid rent, for compensation for loss or damage under the Act, regulations or tenancy agreement and to have the Landlord provide services and facilities agreed to in the tenancy agreement. .

The Tenant said she served the Landlord with the Application and Notice of Hearing (the “hearing package”) by personal delivery on August 15, 2018. Based on the evidence of the Tenants, I find that the Landlord was served with the Tenants’ hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

### Issues(s) to be Decided

1. Are the Tenants entitled to an order to cancel the Notice to End Tenancy?
2. Is there damage or loss to the Tenants and if so how much?
3. Are the Tenants entitled to compensation for the loss or damage and if so how much?
4. Has the Landlord provide services and facilities that were agreed to in the tenancy agreement?

### Background and Evidence

This tenancy started on October 15, 2017 as a month to month tenancy. Rent is \$1,400.00 per month payable on the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$700.00 at the start of the tenancy. A move in condition inspection report was completed on October 10, 2017.

The Landlord said he served the Tenants with a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities dated August 13, 2018. He served the Notice on August 15,

2018 by posting it on the door of the Tenants' rental unit. The Effective Vacancy date on the Notice is August 20, 2018. The Tenants are living in the unit and the Landlord's agent requested an Order of Possession if the Tenants' application is unsuccessful.

The Landlord continued to say that the Tenants have unpaid rent of \$100.00 for June 2018, and \$1,400.00 for each month of July, August and October, 2018. The Landlord did not submit any evidence to support the 10 Day Notice to End Tenancy for unpaid rent or for any of the other months he is claiming that have unpaid rent.

The Tenant said all the rent is paid and the Tenant submitted evidence for the payments of each months rent. The Tenant provided copies of e transfer statements dated July 3, 2018 for \$100.00 and for \$1,400.00. Further the Tenant said the August rent was paid by cash as requested by the Landlord. The Tenant said the Landlord did not provide a receipt for the rent, but there is text message about the rent being left for the Landlord's son in an envelope. The Landlord said he did not receive the envelope with the rent payment in it. The Tenant said the e transfers and the cash payment were paid to the Landlord's son as he was the one who handled the rental. The Landlord said his son was not available for the hearing today.

Further the Tenant submitted a letter confirming the September 2018 rent was paid with a \$450.00 deduction, which was previously ordered by the Residential Tenancy Branch because the Landlord with held services. The Tenant said the October rent has been paid by cheque given personally to the Landlord, but the Landlord has not cashed it yet. The Tenant said the rent has been paid in full and she requested the 10 Day Notice to End Tenancy for unpaid rent dated August 13, 2018 be cancelled.

The Landlord said the rent has not been paid. The Landlord continued to say he did not understand the process so he did not provide any evidence to support his position.

The Tenant continued to say they have requested \$2,013.00 in compensation for laundry costs from July 26, 2018 to September 23, 2018, because the Landlord in violation of a Residential Tenancy Branch Order has not given the Tenants access to the laundry facilities in the garage. The Tenant said one of the Tenants is a tattoo artist so all his laundry has to be done separately because of the possibility of blood stains. The Tenant provided a list of laundry costs.

Further the Tenant provided a listing of tattoo supplies the male Tenant had to repurchase because the Landlord will not allow the Tenants access to the garage where the tattoo supplies are stored. The Tenants requested \$1,162.98 for the replacement of tattoo supplies. The Tenants provide a list of items and receipts and a letter outlining the claim as well as a monetary worksheet.

The Landlord said the he has not restricted the Tenants access to the garage and laundry area.

The Parties were given the opportunity to settle this matter on their own terms, but an agreement was not achieved. The Landlord did mention in his offer to settle that he would provide a key to the garage and laundry for the Tenants as they do not have one at the present time.

The Landlord said in closing that the Tenants have unpaid rent and he has not restricted the Tenants access to the garage, to their belongings or the laundry facilities.

The Tenant said in closing that there is no unpaid rent as shown by the Tenants' evidence and testimony. Further the Landlord has disregarded the previous Order from the Residential Tenancy Branch and is still restricting the garage and laundry areas. The Tenants requested and order to cancel the Notice to End Tenancy and to award the Tenants compensation for the Landlord's actions.

### Analysis

I have reviewed the evidence submitted and the testimony presented at the hearing and the parties will abide by the following decision.

An applicant has the burden of proving their application. The Tenant has provided copies of e transfers for the June and July 2018 rent, a text messages about the August 2018 rent being paid in cash, a letter confirming the September 2018 rent being pay, less the one time rent reduction ordered by the previous hearing and the Tenant gave affirmed testimony that she gave the Landlord a cheque for the October 2018 rent. The Tenant said the October rent cheque has not been cashed yet. Further the Tenant said the rent payments were made to the Landlord's son who the Landlord said was not available for the hearing. The Landlord did not submit or provide any corroborated evidence to refute that the Tenants' paid the rent in full. On the balance of possibilities and in the absence of any evidence from the Landlord's son who was said to have accepted rent payment; I accept the Tenants' evidence and testimony that the rent has been paid in full. Consequently the 10 Day Notice to End Tenancy for Unpaid Rent dated August 13, 2018 is cancelled and the tenancy is order to continue as agreed in the tenancy agreement.

With regard to the Tenants monetary claim section 27 of the Act says:

27 (1) A landlord must not terminate or restrict a service or facility if

(a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or

(b) providing the service or facility is a material term of the tenancy agreement.

(2) A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord

(a) gives 30 days' written notice, in the approved form, of the termination or restriction, and

(b) reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

I accept the Tenants testimony and evidence that the Landlord has restricted the Tenants use of the garage and laundry facilities. I also find the garage and laundry facilities are material terms of the tenancy agreement. Further I find that the Landlord said he would provide a key to the garage during the settlement discussion, which indicated that the Tenants did not have a key at the present time and therefore they are restricted from using the garage and laundry facilities.

Further, as there is a lack of **any** evidence from the Landlord to dispute the Tenants' monetary claims; I accept the Tenant's monetary calculations, receipts and testimony. I award the Tenants \$2,013.00 in compensation for laundry costs and \$1,162.98 for the replacement costs of tattooing supplies and the restricted entry to the garage to use the Tenants belongings. I award the Tenants \$3,175.98 as compensation for the Landlord restricting a material term of the tenancy agreement.

In addition I order the Landlord to provide the Tenants with a key to the garage and laundry facilities forthwith and I order the Landlord not to restrict the Tenants use of the garage and laundry facilities in any way.

With regard to the Tenants' claim for the return of the security deposit; I order the Landlord and Tenants to handle the deposit as prescribed in the Act at the end of the tenancy. The Tenants request for the return of the security deposit is dismissed with leave to reapply.

Conclusion

The 10 Day Notice to End Tenancy for Unpaid Rent dated August 13, 2018 is cancelled and the tenancy is ordered to continue as in the tenancy agreement.

I find in favour of the Tenants' monetary claim. Pursuant to sections 27 and 67 of the Act, I grant a Monetary Order for \$3,175.98 to the Tenants. The order must be served on the Respondent and is enforceable through the Provincial Court of British Columbia (small claims court) 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: October 9, 2018.

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Residential Tenancy Branch