



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PROLINE MANAGEMENT LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes:**

Tenant: CNR, RP, RR, FF

Landlord: OPR MNR, MNDC, FF

### **Introduction**

This hearing was convened in response to cross-applications by the parties for dispute resolution. Both parties attended the hearing.

The tenant originally filed their application July 15, 2019 pursuant to the *Residential Tenancy Act* (the Act) for Orders to cancel a 10 Day Notice to End Tenancy for Unpaid Rent, repairs to the unit, a rent reduction/abatement, and to recover the filing fee.

The landlord originally filed their application July 22, 2019 for an Order of possession, a monetary Order for unpaid rent and to recover the filing fee pursuant to the Direct Request process. As the tenant made prior application the matter set down for a participatory hearing.

The tenant acknowledged receiving the landlord's Application and Notice of Hearing (Notice of Dispute Resolution Proceeding).

The landlord disputes the tenant's claim they served the landlord with their application package and Notice of Hearing. The landlord testified receiving *solely* a copy of an Application from the tenant in late August 2019, dated August 22, 2019, naming the respondent as the agent attending this hearing and not the landlord as corporate entity. The tenant testified they provided this application document to the "front desk" staff of the landlord's place of business. The tenant did not recollect receiving or serving the landlord with their Notice of Hearing document or their evidence. I found that despite the tenant's failings in properly notifying the landlord of their action both parties acknowledged knowing the claim of the other; therefore, pursuant to Section 71(a) and (b) of the Act I am satisfied the landlord is sufficiently aware of the claim against them

and had opportunity to respond. The parties were given opportunity to discuss and settle their dispute to no avail, present *relevant* evidence, and make *relevant* submissions. Prior to ending the hearing both parties acknowledged presenting all the *relevant* evidence that they wished to present.

### *Preliminary matters*

The parties acknowledged the tenancy ended August 31, 2019 when the tenant vacated. As a result, the landlord's application is amended seeking solely unpaid rent for the last 3 months of the tenancy, and the tenant sought solely a rent abatement because of certain claimed deficiencies during the tenancy. The hearing proceeded on the merits of both applications.

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

Is the landlord entitled to the monetary amounts claimed?

Is the tenant entitled to an abatement of rent?

### **Background and Evidence**

The tenancy of this matter ended when the tenant vacated the rental unit and *de facto* possession reverted to the landlord.

The undisputed evidence in this matter is as follows. The subject tenancy began in April 2016. The hearing had benefit of the written Tenancy Agreement and respective annual rent increases in accordance with Regulation. At the outset of the tenancy the landlord collected a security deposit in the amount of \$1750.00 which the landlord retains in trust. During the tenancy the payable rent, due in advance on the first day of each month, was in the amount of \$3952.00 to end of June 2019, and \$4050.80 as of July 01, 2019.

On July 09, 2019 the landlord served the tenant a 10 Day Notice to End Tenancy for Unpaid Rent stating the tenant owed rent for June and July 2019 in the sum of \$8002.80. The tenant also did not pay all rent owed for August 2019. The parties agreed the tenant satisfied a portion of arrears in August 2019 in the amount of \$1500.00. The landlord seeks the balance of rent in the adjusted claim of \$10553.60  $[(\$3952.00 + 4050.80 + \$4050.80) - \$1500.00]$ .

The tenant filed to dispute the landlord's 10 Day Notice, however did not pay the outstanding rent. The tenant claims they are owed a rent reduction for lack of heat for

the period of approximately 3 months in the prior cold season following the failure of the family room/kitchen fireplace in the rental unit which the parties agreed provided the bulk of heating capacity for the rental unit, a lack of a functioning oven for 6 weeks, and an unsecured window following a break-in in early May 2019. The tenant claims they expended \$300.00 for a heater, \$300.00 for a cord of wood for heating, \$50.00 for the cost of a carbon monoxide detector and the cost of “duvets” to offset lack of heat. The tenant did not present evidence nor what circumstances resulted from the claimed unsecured window. In addition to the above stated costs the tenant further seeks a rent reduction equivalent to 3 months payable rent in the sum of \$11,856.00.

The landlord does not dispute that the heating of the rental unit was compromised for 3 months while the landlord installed augmented radiant heating panels in the affected area of the unit. The landlord also does not dispute the tenant’s lack of use of an oven. The landlord disputes the tenant’s assertion that a compromised window from the break-in was not subsequently secured. They testified their “handy man” reported back to them that the window had been secured.

The tenant provided photo images of a washer and dryer, a microwave oven, and a latched closed window (window latch).

### **Analysis**

*A copy of the Residential Tenancy Act, Regulations and other publications are available at [www.gov.bc.ca/landlordtenant](http://www.gov.bc.ca/landlordtenant).*

On the preponderance of the available evidence and on balance of probabilities I find as follows.

**Section 26** of the *Act* states that a tenant must pay rent when it is due, whether or not the landlord complies with the *Act*, the regulations or the tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of rent. I find that filing an application for dispute resolution does not automatically give a tenant a right under the *Act* to deduct all or a portion of the rent. I find that the landlord is owed the unpaid or unsatisfied rent in accordance with the contractual tenancy agreement to the end of the tenancy.

I find agreement by the parties that the tenant likely suffered a lack of *sufficient* heat during a cold portion of the previous season. I find that heat is not the sole provision of the tenancy agreement. Therefore, I find that a total non-payment of the rent for insufficient heat as an extravagant remedy and not reasonable. None the less, I consider the tenant’s inconvenience and likely discomfort associated with

accommodating the insufficient heating. As a result, I grant the tenant a rent abatement for insufficient heat in the set amount of \$10.00 per day for a period of 90 days, or approximately 3 months, in the sum of **\$900.00**.

I find agreement by the parties that the tenant lacked use of an oven for a period of 6 weeks. I find that an oven is not the sole provision of the tenancy agreement. I find that a total non-payment of the rent for lack of an oven as extravagant and not reasonable. I find the tenant did not present how the oven's absence resulted in a loss to the tenant. None the less, I consider the tenant's inconvenience in accommodating the oven's absence. As a result, I grant the tenant a rent abatement for the lack of an oven in the nominal amount of **\$100.00**.

I have not been presented evidence to support the tenant's claim their window was left unsecured following the break-in, nor evidence of a loss by the tenant resulting from a claimed unsecured window. As a result, **I dismiss** the tenant's claim in this respect.

**Section 7** of the Act provides as follows in respect to the remaining claims of the tenant.

**7. Liability for not complying with this Act or a tenancy agreement**

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Effectively, the tenant must satisfy each component of the test below:

1. *Proof the loss exists*
2. *Proof the damage or loss occurred solely because of the actions or neglect of the Respondent in violation of the Act or an agreement*
3. *Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.*
4. *Proof that the claimant followed section 7(2) of the Act by taking reasonable steps to minimize the loss or damage.*

In the absence of receipts or other evidence to support the claimed expenditures of the tenant I find the tenant has not submitted sufficient evidence of a loss incurred for a

heater, cord of wood, carbon monoxide detector or “duvets”. As a result, I must **dismiss** these portions of the tenant’s claim.

As both parties were at least in part successful in their applications they are entitled to recover their filing fee from the other, which effectively cancel out and are not reflected in calculations. *Calculation for monetary order is as follows.* The security deposit will be off-set from the awards made herein.

<b>Landlord:</b> rent arrears / unpaid rent for June, July and August 2019	\$10553.60
<b>Tenant:</b> total of awards for insufficient heat and lack of oven	- \$1000.00
Net to landlord	\$9553.60
<i>Minus security deposit held in trust</i>	-\$1750.00
<b>Monetary Order to landlord</b>	<b>\$7803.60</b>

**I Order** that the landlord retain the security deposit of \$1750.00 in partial satisfaction of their award, and **I grant** the landlord a Monetary Order under Section 67 of the Act for **\$7803.60**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

### **Conclusion**

The parties’ respective applications in their relevant parts are granted.

The landlord is given a Monetary order in the above terms.

**This Decision is final and binding.**

*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 18, 2019

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Residential Tenancy Branch