



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR, MNRL, FFL; CNR, MNDCT, ERP, RP, OLC, DRI

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an order of possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent, pursuant to section 67; and
- authorization to recover the filing fee for her application, pursuant to section 72.

This hearing also dealt with the tenant's application pursuant to the *Act* for:

- cancellation of the landlord's Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, dated September 3, 2020 ("10 Day Notice"), pursuant to section 46;
- a monetary order for compensation under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- an order requiring the landlord to complete emergency and regular repairs to the rental unit, pursuant to section 33;
- an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement, pursuant to section 62; and
- an order regarding a disputed additional rent increase, pursuant to section 43.

The landlord, the landlord's agent, the tenant, the tenant's advocate and the tenant's English language translator attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 91 minutes. The tenant and her advocate spoke for most of the hearing time, as compared to the landlord and her agent.

The landlord confirmed that her agent had permission to speak on her behalf at this hearing. The tenant confirmed that her advocate and translator had permission to assist her at this hearing.

Both parties confirmed receipt of the other party's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that both parties were duly served with the other party's application.

The tenant's advocate confirmed receipt of the landlord's 10 Day Notice on September 3, 2020, by way of posting to the tenant's rental unit door. The landlord's agent confirmed the above date and service method. Both parties agreed that the effective move-out date on the notice is September 13, 2020. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the landlord's 10 Day Notice on September 3, 2020.

During the hearing, the tenant's advocate indicated that no emergency repairs were required by the tenant, and the tenant was not pursuing her monetary claim of \$12.66 for stress medications. I notified both parties that these portions of the tenant's application were dismissed without leave to reapply.

#### Issues to be Decided

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

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

Is the landlord entitled to recover the filing fee for her application?

Is the tenant entitled to a monetary order for compensation under the *Act*, *Regulation* or tenancy agreement?

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

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 regarding a disputed additional rent increase?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of both parties' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on January 1, 2020 for a fixed term ending on January 1, 2021. A security deposit of \$1,500.00 was paid by the tenant and the landlord continues to retain this deposit. A written tenancy agreement was signed by both parties. The tenant continues to reside in the rental unit.

The landlord testified that monthly rent in the amount of \$1,500.00 is payable on the first day of each month. Both parties agreed that the tenant has been paying rent of \$1,500.00 per month to the landlord, from January to August 2020. Both parties agreed that the written tenancy agreement, which was drafted by both the landlord and the tenant, indicates \$1,000.00 per month for the rent, but that the landlord's agent changed it to \$1,500.00.

The landlord seeks an order of possession against the tenant. Both parties agreed that the landlord issued the 10 Day Notice for unpaid rent of \$1,500.00 due on September 1, 2020. The landlord seeks a monetary order of \$1,500.00 for unpaid rent for September 2020 and to recover the \$100.00 filing fee for her application. The landlord's agent claimed that the rent is \$1,500.00 per month, the tenant has been paying it throughout the tenancy from January to August 2020, that it was the verbal agreement between the parties, and when he was hired on August 13, 2020, he changed the rent amount in the tenancy agreement because the \$1,000.00 amount was incorrect.

The tenant seeks to cancel the landlord's 10 Day Notice. The tenant's advocate stated that the tenant did not pay any rent to the landlord for September 2020, but she deducted the overpayment of \$1,000.00 from her security deposit and used it for the full rent she says was owed for September 2020. The tenant claimed that rent is \$1,000.00 per month, as per the written tenancy agreement. The landlord claimed that she does not know English and that she signed the tenancy agreement with a witness who was there for the tenant and did not explain anything to her. The tenant claimed that there were two witnesses assisting the landlord with English. She stated that the landlord told her to indicate the \$1,000.00 amount in the tenancy agreement, which the landlord denied. The tenant maintained that she paid \$1,500.00 per month in rent to the landlord, as per the parties' verbal agreement, which was contingent on the fact that the

landlord would not sell the rental unit to a single buyer, rather than a developer, for ten years. The landlord denied this agreement. The tenant said that she did not include a ten-year fixed term tenancy because the landlord asked her to indicate one year in the tenancy agreement. She stated that her advocate told her in September 2020, that the rental unit was sold, so her rent should have only been \$1,000.00 per month as of September 2020, because the landlord violated the agreement not to sell. The tenant's advocate denies telling the tenant the rental unit was sold, claiming that he only became involved with this matter at the end of September 2020. He stated that he discovered from searching online that the rental unit was sold on August 13, 2020, and the landlord did not know about it at the time.

The tenant seeks repairs to the rental unit, which the landlord agreed to complete. The tenant requested repairs to smoke detectors, a heat controller, the stove, the sink and countertop inside the master bedroom, the master bedroom closet and door lock, the living room window, the washer and dryer room door, the kitchen cabinet door and board under the kitchen sink.

The tenant seeks a monetary order of \$4,426.15. The tenant seeks \$4,000.00 total for an overpayment of rent at \$500.00 per month for eight months from January to August 2020, claiming that the rent should have only been \$1,000.00 per month. The tenant seeks \$426.15 for plumbing repairs that she said she made at the request of the landlord before she moved into the unit in December 2019. She claimed that although she was not promised reimbursement by the landlord, maintenance is the responsibility of the landlord, who violated his agreement not to sell the rental unit. She stated that she did not ask for this reimbursement earlier because she did not want conflict with the landlord, and she intended to rent for a long term. The landlord disputes this claim, stating that there was no agreement for reimbursement and the tenant did not pay half a month's rent for December 2019 when she moved in early, so the repairs were the tenant's responsibility.

### Analysis

#### Rent and 10 Day Notice

I find that the tenant agreed to pay \$1,500.00 for an eight-month period from January to August 2020 and did not dispute this amount until the landlord issued a 10 Day Notice and these applications were filed in response to the landlords' 10 Day Notice. Despite apparently overpaying the security deposit in the amount of \$1,000.00 and an extra \$4,000.00 in rent, the tenant did not file any dispute of the rent in the last 8 months.

Accordingly, I find that the current amount of rent is \$1,500.00 per month as per the verbal agreement of both parties. Despite the written tenancy agreement indicating \$1,000.00 for monthly rent, both parties' express conduct indicates that the tenant paid \$1,500.00 for rent for eight months, which was accepted by the landlord. I do not accept the tenant's claim that rent of \$1,500.00 was contingent on the landlord not selling the rental unit for 10 years, as it was disputed by the landlord, the tenancy agreement only indicates a fixed term of one year, and there is no other written agreement to demonstrate this fact. Therefore, the tenant's application to dispute a rent increase and to recover \$4,000.00 in overpaid rent from January to August 2020, is dismissed without leave to reapply.

The tenant failed to pay the full rent due of \$1,500.00 on September 1, 2020, within five days of receiving the 10 Day Notice. The tenant made an application pursuant to section 46(4) of the *Act* on September 8, 2020, within five days of receiving the 10 Day Notice on September 3, 2020. However, the tenant agreed at the hearing that she used \$1,000.00 of her security deposit towards the rent. Although the security deposit paid by the tenant was in excess of half the rent amount, contrary to section 19 of the *Act*, and the tenant would have been entitled to deduct the overpayment from rent, I find that the tenant would only have been entitled to deduct \$750.00 from her security deposit towards the rent due of \$1,500.00 (as only \$750.00 was overpaid on the deposit at a rent of \$1,500.00), which still leaves an unpaid rent balance of \$750.00.

In accordance with section 46(5) of the *Act*, the failure of the tenant to pay full rent of \$1,500.00 within five days led to the end of this tenancy on September 13, 2020, the effective date on the 10 Day Notice. In this case, this required the tenant and anyone on the premises to vacate the premises by September 13, 2020. As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession against the tenant, pursuant to section 55 of the *Act*. I find that the landlord's 10 Day Notice complies with section 52 of the *Act*. Therefore, the tenant's application to cancel the landlord's 10 Day Notice is dismissed without leave to reapply.

Section 26 of the *Act* requires the tenant to pay monthly rent to the landlord on the date indicated in the tenancy agreement, which in this case, is the first day of each month. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Residential Tenancy Regulation* or tenancy agreement must compensate a landlord for damage or loss that results from that failure to comply.

I find that the tenant failed to pay rent of \$1,500.00 to the landlord for September 2020 and the landlord is entitled to rent arrears from the tenant.

As the landlord was successful in her application, I find that she is entitled to recover the \$100.00 filing fee from the tenant.

The landlord continues to hold the tenant's security deposit of \$1,500.00. Over the period of this tenancy, no interest is payable on the deposit. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's entire security deposit of \$1,500.00, towards the September 2020 rent owed.

I issue a monetary order of \$100.00 to the landlord for the recovery of the filing fee.

### *Tenant's Repairs and Monetary Claim*

As this tenancy is ending, the tenant's application for regular repairs and an order for the landlord to comply, which are only related to an ongoing tenancy, is dismissed without leave to reapply.

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. 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 tenant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

On a balance of probabilities and for the reasons stated below, I dismiss the tenant's application of \$426.15 without leave to reapply. I find that the tenant failed part 2 of the above test.

I find that the tenant failed to show that she completed plumbing repairs at the request of the landlord and that the landlord agreed to reimburse her for same. The tenant did not produce any written agreement to this effect. The landlord denied any agreement and said that the repairs were done in exchange for the tenant moving in early and receiving half a month's free rent for December 2019. I find that the tenant completed these repairs of her own accord before moving in and that she bears the cost of same.

Conclusion

I grant an Order of Possession to the landlord effective two (2) days after service on the tenant. Should the tenant or anyone 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.

I order the landlord to retain the tenant's entire security deposit of \$1,500.00, in partial satisfaction of the monetary award.

I issue a monetary order in the landlord's favour in the amount of \$100.00 against the tenant. The tenant must be served with this Order as soon as possible. Should the tenant 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.

The tenant's entire application is dismissed without leave to reapply.

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 26, 2020

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Residential Tenancy Branch