



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding HOLLYBURN ESTATES LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes:**

*OPR, CNR, MNR, MNDC, MNSD, ERP, RP, FF*

### **Introduction.**

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for an order of possession and for a monetary order for unpaid rent and the filing fee. The tenant applied for an order to cancel the notice to end tenancy and for an order directing the landlord to carry out repairs. The tenant also applied for a monetary order for the compensation for the loss of the use of the shower stall.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other.

During the hearing the tenant agreed that the repair work was completed on February 13, 2013. Therefore the portion of the tenant's application regarding an order for repairs to be carried out is moot. Accordingly this hearing only dealt with the tenant's application for compensation and the landlord's application for an order of possession and a monetary order.

### **Issues to be decided**

Is the landlord entitled to an order of possession or should the notice to end tenancy be set aside? Is the landlord entitled to a monetary order for unpaid rent? Is the tenant entitled to compensation?

### **Background and Evidence**

The landlord and tenant entered into a tenancy agreement on January 01, 2012. The current rent is \$1,235.00 per month due on the first day of each month.

The landlord stated that the tenant did not pay full rent for February and on February 08, 2013, the landlord had served the tenant with a ten day notice to end tenancy for unpaid rent and late fees in the amount of \$267.00. The tenant agreed that as of the date of this hearing she still owed this amount for February.

The tenant stated that she paid rent for March in two installments. The landlord stated that only one installment was received and the landlord issued a receipt for use and occupancy only. The landlord testified that as of the day of this hearing, the tenant owed \$640.00 for March and \$267.00 for February, for a total of \$907.00 in unpaid rent and late fees.

The landlord has applied for a monetary order for this amount, for the filing fee of \$50.00 and to retain the security deposit in partial satisfaction of the claim.

The tenant stated that on December 20, 2012 she contacted the landlord to report some loose tiles on the shower wall. The landlord wrote out a work order and maintenance staff attended the unit the same day to assess the problem. On December 21, some tiles were removed and the wall was left to dry out. Both parties mutually agreed to continue the work after the Christmas holidays.

On December 27 the tenant called the office and an assessment was done on December 28. Shortly after, the tenant informed the landlord that she wanted a professional repair person to take care of the problem and she denied entry to the maintenance personnel hired by the landlord. The tenant also involved the services of a health inspector and a contractor to assess the problem.

The landlord made attempts to set up a schedule for times to have the work done and the tenant did not return the initial calls or emails. The tenant stated that she wanted to be home during the work and refused to give permission for entry at times when it was not convenient for her to be home.

Both parties filed copies of emails between the two parties which showed several attempts on the part of the landlord to schedule dates and times for the work to be carried out.

On January 30, the landlord sent the tenant a schedule with several options and asked her to choose times that were convenient for her. Eventually the work got done on February 13, 2013. The tenant has applied for compensation in the amount of \$800.00 for the loss of use of the shower for the period of December 20, 2012 to February 13, 2013.

## **Analysis**

The tenant received the notice to end tenancy for unpaid rent, on February 08, 2013 and did not pay rent within five days of receiving the notice to end tenancy, pursuant to Section 46 to set aside the notice to end a residential tenancy, and the time to do so has expired.

In these situations, the *Residential Tenancy Act* provides that the tenant has been deemed to have accepted the end of the tenancy on the date set out in the Notice. Pursuant to section 55(2) I am issuing a formal order of possession effective two days after service on the tenant. The Order may be filed in the Supreme Court for enforcement.

Based on the sworn testimony of both parties, I accept the landlord's evidence in respect of the claim. I find that the tenant did not pay rent and late fees in the amount of \$907.00. Since the landlord has proven her case, she is also entitled to the recovery of the filing fee of \$50.00.

Overall, the landlord has established a claim of \$957.00. I order that the landlord retain the security deposit of \$600.00 in partial satisfaction of the claim, and I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance due of **\$357.00**. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Section 32 of the *Residential Tenancy Act*, speaks to the landlord and tenant obligation to repair and maintain the rental unit. The landlord must provide and maintain the rental property in a state of decoration and repair that complies with the health, safety and housing standards required by law.

I find that the landlord fulfilled her obligations by acting on the tenant's complaint in a timely manner and also by making the necessary arrangements to have the problem assessed and the repair work started.

In this case, I find that the landlord made attempts to carry out her responsibilities to provide and maintain the rental unit in a condition that complies with the health, safety and housing standards, but the tenant did not cooperate with the landlord and denied the landlord's maintenance staff access to the rental unit.

The repairs were further hampered by the tenant wanting to be present in the rental unit while the work was being carried out and for various personal reasons, was unable to provide suitable dates. Based on the testimony of both parties and the documentary evidence filed by both parties, I find the landlord made several efforts to schedule the work at the tenant's convenience which resulted in the delay.

Therefore, I find that the tenant caused the delay in the repair work and I further find that the tenant has not proven negligence on the part of the landlord. Accordingly, I find that the tenant has not proven her case for compensation for the loss of use of the shower.

### **Conclusion**

I grant the landlord an order of possession effective two days after service on the tenant. I also grant the landlord a monetary order in the amount of **\$357.00**.

The tenant's application is dismissed in its entirety.

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: March 13, 2013

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Residential Tenancy Branch

