



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** OPR, MNR, MNSD, RR, FF

### **Introduction**

This hearing dealt with an applications filed by both the landlord and the tenant.

The landlord seeks orders as follows:

1. A monetary order pursuant to Section 67;
2. An Order of Possession pursuant to Section 55; and
3. An Order to recover the filing fee pursuant to Section 72.

The tenant seeks:

1. A monetary order pursuant to Section 67;
2. An Order to be allowed to reduce the rent for repairs, services or facilities agreed upon but not provided.

I accept the landlord's undisputed evidence that the tenant was properly served with the Notice to End Tenancy by way of posting the Notice to the rental unit door on April 7, 2013.

I accept the landlord's undisputed evidence that the tenant was properly served with the Application for Dispute Resolution including the Notice of Hearing and the landlord's evidence by way of registered mail sent April 17, 2013.

I accept the tenant's undisputed evidence that the landlord was served with the tenant's Application for Dispute Resolution by registered mail sent April 9, 2013.

Both parties appeared at the hearing and gave evidence under oath.

**Issue(s) to be Decided**

Is the landlord entitled to an Order of Possession? Is the landlord entitled to a monetary Order for unpaid rent and loss of revenue? Should the landlord be allowed to retain the security deposit and recover the filing fee paid for this application?

Is the tenant entitled to a monetary Order? Should the tenant be allowed to reduce the rent for repairs, services or facilities agreed upon but not provided?

**Background**

This tenancy began on September 1, 2012. Rent was fixed at \$1,400.00 per month payable in advance on the last day of the previous month. The tenant paid a security deposit of \$700.00 and a pet deposit of \$350.00 at the start of the tenancy.

The landlord testified that the tenant is supposed to pay \$700.00 towards her rent and social services pays \$700.00. The landlord says that throughout the tenancy the tenant has been late with her portion of the rent. With respect to April rent the landlord says she received \$700.00 from social services and nothing from the tenant. Therefore, on April 5, 2013 the landlord posted a Notice to End Tenancy for unpaid rent on the rental unit door seeking the tenant's share of \$700.00. On April 30, 2012 the landlord received a further payment from social services in the sum of \$700.00 which was intended for May's rent however this sum was applied to April's outstanding rent. Rent for May remains unpaid.

The landlord is claiming rent for May in the sum of \$1,400.00 and an Order of Possession effective as soon as possible. Further, the landlord submits that she will likely be unable to re-rent the premises before mid-June so she is seeking half of June's rent, recovery of the filing fee and to be allowed to retain the pet and security deposits in partial satisfaction of this claim.

The tenant filed an Application on April 9, 2013 seeking a monetary order and seeking to reduce the rent. The Application does not seek to cancel the Notice to End Tenancy. The tenant says that she amended her application to seek more time (to make an application seeking to cancel the Notice to End Tenancy) as well as seeking to cancel that Notice although she admits she has not paid the rent.

The tenant says she has a "services in exchange for rent" agreement with the landlord and that the landlord actually owes her \$1,090.00 in this regard. The tenant says this is why she has not paid her rent. The tenant submits that the rental unit was not ready for

move-in and that the basement was not finished however she moved-in in any event and performed services in lieu of rent. The tenant submits that despite their agreement the landlord demanded full rent and has not paid for the services the tenant performed.

The landlord responded that she has made no agreements written or otherwise with the tenant whereby the tenant would perform services in lieu of rent. The landlord submits that the basement is fully finished with a bedroom, recreation room, custom cabinets, laundry room and bathroom. The landlord provided photographs in this regard. The landlord agreed that the rental unit needed a thorough cleaning at move-in so she hired a cleaner and there were also other repairs to be performed. The landlord says that brand new flooring was installed by Bridgeport Carpets in the upstairs bathroom, kitchen, and stairs to the basement, hallway, basement bedroom and bathroom in the basement. The landlord agrees that installation of flooring in the basement was delayed due to a leaky toilet however it was completed within a few days of the tenant moving in as was the repair to the toilet. The landlord testified that to her knowledge the only work the tenant has performed on the rental unit was to paint one bathroom white. The landlord also submits that she visited the tenant at the rental unit on March 29, 2013 and the tenant said nothing about problems or emergencies, provided no invoices for any repairs and advised she was really happy with the house.

The tenant agrees she has no documentary evidence with respect to the agreement between herself and the landlord but she expected that the landlord would have to be honest at this hearing. The tenant says that if documentation is required she can produce that documentation. The tenant says that she has applied to Telus to retrieve all of the text messages sent between the parties which detail the agreement between herself and the landlord. The tenant says she has filed another application seeking compensation from the landlord and she intends to present these text messages at this other hearing which she says is set for July.

## **Analysis**

### ***Order of Possession***

Although the tenant says she has made application seeking more time to make an application seeking to cancel the Notice to End Tenancy which is the subject of the landlord's application as well as seeking to cancel the Notice that application is not before me. In any event, even if it were before me, the tenant agrees that she has not paid the rent. The tenant claims to have reason to withhold her rent however the Act does not allow tenants to withhold their rent for any reason except in very specific circumstances or by way of an Order of the Residential Tenancy Branch allowing them to do so. There has been insufficient evidence to show that any circumstances exist

whereby the tenant would be allowed to withhold her rent. However, the undisputed evidence does show that rental arrears remain outstanding and I therefore find that the landlord is entitled to receive an Order of Possession.

The landlord has requested an immediate Order of Possession and I will issue that Order effective 2 days after service on the tenant.

***Monetary Order - Landlord***

Based on the undisputed evidence that May's rent has not been paid, I find that the landlord is entitled to a monetary Order for May's rent.

With respect to the landlord's claim for part of June's rent, as I will be issuing an Order of Possession effective 2 days after service it may be that the landlord could secure new tenants and not suffer a loss of revenue for June. On that basis I decline to make a pre-emptive award for loss of revenue and this claim is dismissed. However, it is dismissed with leave and the landlord remains at liberty to reapply if necessary.

***Monetary Order – Tenant***

I find that the tenant has failed to bring sufficient evidence to show that there was any agreement between the parties such that the tenant would provide services for which she would be paid in cash or in lieu of rent. Further, I find that the tenant has failed to bring sufficient evidence to show that she is entitled to a monetary Order in the sum of \$1,090.00 as claimed. This claim is therefore dismissed.

***Rental Reduction – Tenant***

I find that the tenant has failed to bring sufficient evidence to show that she should be entitled to reduce her rent and, in any event, this tenancy is ending. This claim is also therefore dismissed.

***Filing Fees***

As the landlord has been successful in this application I find that the landlord is entitled to recover the filing fees paid for this application.

***Security and Pet Deposits***

I find further that the landlord is entitled to retain the security and pet deposits in partial satisfaction of the rental arrears.

***Calculation of total Monetary Award in Favour of Landlord***

Rental Arrears (May)	\$1,400.00
Filing Fees for the cost of this application	50.00
Less Security and Pet Deposits	-1,050.00
Interest from the date the deposits were paid to the date of this Order	0.00
Total Monetary Award	\$400.00

**Conclusion**

The landlord is provided with a formal copy of an Order of Possession. This is a final and binding Order enforceable as any Order of the Supreme Court of British Columbia.

The landlord is provided with a formal copy of an order for the total monetary award as set out above. This is a final and binding Order enforceable as any Order of the Provincial Court of British Columbia.

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: May 07, 2013

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Residential Tenancy Branch

