



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes            CNR, OPR, MNR, MDSD & FF

### Introduction

The Application for Dispute Resolution filed by the landlord makes the following claims:

- a. An Order for Possession for cause.
- b. A monetary order in the sum of \$1425 for unpaid rent and damages
- c. An order to retain the security deposit
- d. An order to recover the cost of the filing fee

The Application for Dispute Resolution filed by the Tenant makes the following claims:

- a. An order to cancel the one month Notice to End Tenancy dated June 8, 2017
- b. A monetary order in the sum of \$400.

The Amended Application for Dispute Resolution filed by the Tenant seeks an ongoing rent reduction of \$75 a month.

The tenant filed a second Amendment on July 27, 2017. I determined it was not appropriate to hear that claim in this application as the landlord has not been given a sufficient opportunity to prepare and I ordered that the claim set out in the Amendment dated July 27, 2017 be severed. The tenant has liberty to re-apply.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the one month Notice to End Tenancy was sufficiently served on the Tenant on June 8, 2017. Further I find that the Application for Dispute Resolution/Notice of Hearing and the Amendment was served on the landlord by mailing, by registered mail to where the landlord resides on June 16, 2017 and July 14, 2017 respectively. I find that the Application for Dispute Resolution/Notice of Hearing filed by the landlord was sufficiently served on the tenant. :

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the landlord is entitled to A Monetary Order and if so how much?
- b. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- c. Whether the landlord is entitled to recover the cost of the filing fee?
- d. Whether the tenant is entitled to an order cancelling the 10 day Notice to End Tenancy dated June 8, 2017?
- e. Whether the tenant is entitled to a monetary order and if so how much?
- f. Whether the tenant is entitled to an order for an ongoing reduction of rent of \$75 per month.
- g. Whether the landlord is entitled to an Order for Possession?

Background and Evidence

The tenancy started on April 1, 2017. The tenancy agreement is oral. The present rent is \$450 per month payable in advance on the first day of each month. The tenant paid a security deposit of \$225 at the start of the tenancy.

There is a great deal of animosity between the parties and the relationship is deteriorating. Both parties recognized the tenancy was dysfunctional and they reached a settlement on when the tenancy will come to an end. The parties were not able to reach an agreement of their respective monetary claims and I will be considering their disputed claims later in this decision.

Settlement:

At the end of the hearing the parties reached a settlement on the end of the tenancy and they asked that I record the settlement pursuant to section 63(2) as follows:

- a. The parties mutually agree to end the tenancy on September 30, 2017.
- b. The parties request the arbitrator issue an Order of Possession for September 30, 2017.

As a result of the settlement I issued an Order of Possession effective September 30, 2017.

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

Monetary Claims:

Section 7 of the Act states as follows:

### **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.

(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.

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires

- a. Proof that the damage or loss exists
- b. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
- c. Verification of the Actual amount required to compensate for loss or to rectify the damage
- d. Proof that the claimant followed section 7(2) of the Act by doing whatever is reasonable to minimize the damage or loss

Both sides have made monetary claims. For the most part, the evidence presented lacks the particularity to prove the claim and also lacks verification of the damages that occurred. However, in a situation such as an arbitrator must do the best she/he can do given the limitations of the evidence.

#### The Landlord's Claim for a Monetary Order:

With respect to each of the landlord's claims I find as follows:

- a. I dismissed the landlord's claim of \$725 for the cost to repair a damaged tile. The landlord testified the tenant threw a dish that broke the tile. The tenant denied throwing a dish but acknowledged a dish fell because of where the landlord placed the dish. The work has not been completed. The landlord failed to provide evidence as to the amount it would cost to repair the tile. I determined the amount claimed is excessive and unreasonable. I ordered this claim be dismissed without leave to re-apply.
- b. The landlord claimed the sum of \$500 for the cost of a water bill. She testified the tenant leaves the water running more than 5 hours a day. The tenant denies this. The tenant testified others use the water as well as her. The landlord failed to present a water bill. I determined the landlord failed to prove this claim and it is dismissed without leave to re-apply.
- c. The landlord claimed \$200 for additional electricity used. The tenant denies that she uses excessive electricity. The landlord failed to provide an electrical bill. I determined the landlord failed to prove this claim.

In summary I ordered that the landlord's monetary claim including a claim to recover the cost of the filing fee be dismissed.

Tenant's Application:

The tenant sought a monetary order in the sum of \$400 for the loss of quiet enjoyment and inconvenience.

In a previous hearing held on June 30, 2017 I awarded compensation in the sum of \$50 for the breach of the covenant of quiet enjoyment from the start of the tenancy on April 1, 2017 to the date of this hearing (which was June 30, 2017). This decision is binding on the parties and the tenant is not free to claim additional sums for a time period she has already been compensated.

The interpreted the tenant's claim is for compensation for the period July 1, 2017 to the date of this hearing on August 16, 2017. The tenants claim is as follows:

- The tenant shares kitchen facilities with other tenants in the lower suite. She testified the landlord has locked her out of the kitchen after 9:00 p.m. at night contrary to my order of June 30, 2017.
- The fridge is not working satisfactorily.
- The landlord is constantly harassing and screaming at her
- The landlord failed to clean the stove and rental area.

The landlord disputes the tenant's evidence saying the tenant is at fault. She pointed out many circumstances where the landlord alleges misconduct on the tenants side.

This is a disputed claimed. The tenancy is dysfunctional. I am satisfied based on the evidence presented that the landlord has barred the tenant from cooking after 9:00 p.m.. The tenant produced a Notice from the landlord setting out this requirement. The landlord gave this notice after receiving my decision dated June 30, 2017 where I determined "I determined the landlord does not have a right to impose condition on when the tenant is entitled to cook " Further, I am satisfied the landlord has breached the covenant of quiet enjoyment by harassing the tenant and imposing unreasonable demands. I determined the tenant is entitled to compensation in the sum of \$100 for the period July 1, 2017 to August 16, 2017.

I ordered that the Landlord pay to the Tenant the sum of \$100 such sum may be deducted from future rent. I dismissed the Tenant's claim in the Amendment dated July 14, 2017 that there be an ongoing rent reduction of \$75 per month.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

Conclusion:

I issued an Order of Possession effective September 30, 2017 after the parties mutually agreed to end the tenancy on that date. I dismissed the landlord's claim for a monetary order. I ordered that the landlord pay to the tenant the sum of \$100 such sum may be deducted from future rent.

**This decision is final and binding on the parties.**

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: August 16, 2017

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Residential Tenancy Branch