



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards  
Ministry of Housing and Social Development

## **DECISION AND REASONS**

### **Dispute Codes**

CNR, OPR, MNR, FF

### **Introduction**

This hearing was convened in response to an application by the tenant, and an application by the landlord.

**The tenant** seeks to Cancel a 10 Day Notice to End Tenancy for Unpaid Rent (Notice to End) dated June 05, 2009 with an effective date of June 18, 2009 and to recover the filing fee for this application.

**The landlord** seeks an Order of Possession for unpaid rent and a Monetary Order for the unpaid rent.

Both the tenant and the landlord appeared at and participated in the conference call hearing and provided affirmed testimony in the proceedings.

At the outset of the hearing I was advised by the landlord that the tenant was not sent any evidence, but that the landlord did serve the tenant with the landlord's application and Notice of Dispute Resolution. The tenant acknowledged receiving a Notice for Dispute Resolution and that he has not forwarded any evidence to the landlord or the hearing file.

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

Is the notice to end tenancy valid? Should the notice to end tenancy be cancelled?

Is the landlord entitled to an Order of Possession?

Are the landlord and the tenant entitled to the monetary amounts claimed?

## **Background and Evidence**

The undisputed testimony of the parties is that rent is in the amount of \$2600 per is payable in advance on the first day of each month. The tenant failed to pay rent in and for the month of June 2009 and on June 05, 2009 the landlord served the tenant with a notice to end tenancy for non-payment of rent.

The landlord claims the tenant further failed to pay rent in the month of July 2009. The tenant testified that he did not pay June's rent, but has to date paid July's rent and has done so online via internet transfer, as has been the practice of this tenancy. The landlord testified he could not confirm that July rent had been paid, but would check into it as soon as possible and any evidence to that effect would be to the tenant's favour. The landlord's position is that if July rent has been paid online, the landlord in no way accepts July's rent as a reinstatement of the tenancy but as for use and occupation only.

The tenant testified as to the reason he did not pay June's rent. The tenant claims that some month's ago the landlord sent him an e-mail saying that he had to move out because he needed to renovate the suite in preparation for its eventual sale. The tenant did not oppose the landlord's intentions and corresponded with the landlord that according to Residential Tenancy Branch information he would be entitled to compensation of a month's rent, and there was a form, but he would waive the form and simply keep a month's rent and begin looking for another place. The tenant claims he has found another place for August 01, 2009, but does not wish to move, unless he has to. The tenant acknowledges that he has never received a Notice to End Tenancy for landlord's use, but that since he acted on the landlord's request and waived receiving proper Notice to End Tenancy from the landlord, he has not done anything improper by holding back the rent for June 2009 as compensation due to him, as *if* the landlord had issued a proper Notice to End Tenancy for Landlord's Use of Property.

The landlord testified that he did e-mail the tenant several months back to canvass him on the idea of him moving out so as he could regain possession, but that the correspondence would show the parties did not come to agreement on any definitive plan or any timing to end the tenancy. The landlord stated he did not issue the tenant a

Two Month Notice to vacate for landlord's use, as he knows he must do, as no agreement between them had been established and he corresponded with the tenant that the tenancy could simply continue as usual. The landlord claims he served the 10 Day Notice to End after the tenant failed to pay rent, and that the rent for June has not been paid, and July's rent is in question. The landlord orally requested an Order of Possession for as soon as possible. The quantum of the landlord's monetary claim is **\$5200** for unpaid rent.

### **Analysis**

Based on the testimony of both parties I find that the tenant was served with a notice to end tenancy for non-payment of rent and I find the notice to be valid. The landlord's Notice to End is upheld, and the tenant's application to cancel the landlord's notice is hereby dismissed without leave to reapply.

The tenant has not paid the outstanding rent.

For the understanding and benefit of the parties:

**Section 49(7)** of the Residential Tenancy Act (the Act) states that in respect to a Notice to End Tenancy for landlord's use under Section 49, if issued by the landlord:

(7) A notice under this section must comply with **section 52** *[form and content of notice to end tenancy]*.

**Section 52** of the Act states:

#### **Form and content of notice to end tenancy**

**52** In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.

**Section 55** of the Act states:

**Order of possession for the landlord**

**55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,

(a) the landlord makes an oral request for an order of possession, and

(b) the director dismisses the tenant's application or upholds the landlord's notice.

Based on the above facts **I find** that the landlord is entitled to an Order of Possession.

As for the monetary order, **I find** that the landlord has established a claim for **\$5200** in unpaid rent.

**Conclusion**

**I grant** an Order of Possession to the landlord effective **2 days** from the day it is served upon the tenant. The tenant must be served with this Order of Possession. If necessary, should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

**I grant** the landlord a Monetary Order under section 67 for the amount of **\$5200**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated July 24, 2009.