

## **DECISION**

### **Dispute Codes:**

OPC, CNC, OPR, MNR, MNDC, and FF

### **Introduction**

This hearing dealt with cross applications between the parties.

The Landlord filed an Application for Dispute Resolution, in which the Landlord has made application for an Order of Possession for Cause, an Order of Possession for Unpaid Rent; a monetary Order for unpaid rent and a monetary Order for money owed or compensation for damage or loss.

The Tenant filed an Application for Dispute Resolution, in which the Tenant has made application for set aside a Notice to End Tenancy for Cause and to recover the filing fee from the Landlord for the cost of this Application for Dispute Resolution.

**Both parties were represented at the both hearing.** They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

The Landlord filed his Application for Dispute Resolution on July 02, 2010. He stated that he made several unsuccessful attempts to personally serve the Notice of Hearing and the Application for Dispute Resolution Package to the Tenant. He stated that a copy of the Ten Day Notice to End Tenancy was included in the evidence that he served upon the Tenant. He stated that he eventually served these documents to the Tenant by Express Post on July 07, 2010.

The Tenant stated that he has not yet received the package that the Landlord mailed on July 07, 2010. The Tenant indicated that he wished an adjournment to provide him with time to locate and review the Landlord's Application for Dispute Resolution and the Landlord's evidence that was served with that package. The Landlord opposed the request for an adjournment on the basis that he had properly served the Tenant with the aforementioned documents.

I find that an adjournment is necessary to provide the Tenant with a reasonable opportunity to prepare a response to the Landlord's Application for Dispute Resolution. In reaching this conclusion, I was strongly influenced by the fact that these documents were only mailed six days ago and it is reasonable to believe that the Tenant has not yet received those documents in the mail.

Both parties were advised that they will receive notice of the time and date of the reconvened hearing in the mail; that neither party is required to serve the notice of hearing on the other party; and that both parties are expected to appear at the reconvened hearing. The Tenant was advised that he should contact the Residential Tenancy Branch and obtain copies of the Landlord's Application for Dispute Resolution and a copy of the Ten Day Notice to End Tenancy that is on file with the Residential Tenancy Branch if he does not receive the documents that were allegedly mailed to him on July 07, 2010.

### Issue(s) to be Decided

The issues to be decided in relation to the Landlord's Application for Dispute Resolution are whether the Landlord is entitled to an Order of Possession for Cause; an Order of Possession for Unpaid Rent; and a monetary Order for unpaid rent, pursuant to sections 55 and 67 of the *Residential Tenancy Act (Act)*.

The issues to be decided in relation to the Tenant's Application for Dispute Resolution are whether Notice to End Tenancy for Cause should be set aside and whether he is entitled to recover the fee for filing the Application for Dispute Resolution, pursuant to sections 47(4) and 72 of the *Act*.

### Background and Evidence

The Landlord and the Tenant agreed that the Tenant had been residing in the rental unit for a period of time before the parties entered into a written tenancy agreement on, or about, January 01, 2008; and that the Tenant is required to pay monthly rent of \$1,000.00 on the first day of each month.

At the original hearing the Landlord and the Tenant agreed that the Tenant had not paid rent for June or July of 2010. The Tenant stated that he had not paid rent because he was awaiting the outcome of the hearing. He was advised that he is obligated to pay his rent when it is due, regardless of the fact that he filed an Application for Dispute Resolution.

At the original hearing the Landlord stated that on June 07, 2010 he mailed the Tenant a copy of a Ten Day Notice to End Tenancy, dated June 07, 2010, via registered mail. He submitted a copy of Canada Post documents, which include a tracking number, that corroborate this statement.

The Tenant stated that he did receive registered mail from the Landlord sometime during the first week of June. He stated that the package only contained the One Month Notice to End Tenancy and that it did not contain a Ten Day Notice to End Tenancy. He stated that he has not yet received a Ten Day Notice to End Tenancy from the Landlord.

The Landlord and the Tenant agree that a One Month Notice to End Tenancy for Cause was placed in the Tenant's mail box on May 27, 2010.

The Landlord submitted a copy of a One Month Notice to End Tenancy that has a declared effective date of June 27, 2010, which is dated on May 27, 2010 but is not signed by the Landlord. The Landlord stated that this is not the One Month Notice to End Tenancy that he served on the Tenant and is now seeking to enforce. He stated that he served the Tenant with a One Month Notice to End Tenancy that has a declared effective date of June 30, 2010, which is also dated on May 27, 2010.

The Tenant did not submit a copy of the One Month Notice to End Tenancy that he is seeking to have set aside, but he stated that the declared effective date of that Notice is June 30, 2010.

Given that neither party submitted a copy of the One Month Notice to End Tenancy that is the subject of this dispute, the parties were advised to submit a copy of that One Month Notice to the Residential Tenancy Branch prior to the reconvened hearing and that the One Month Notice to End Tenancy will be considered at the reconvened hearing.

### Analysis

I find that the Landlord and the Tenant entered into a tenancy agreement that requires the Tenant to pay monthly rent of \$1,000.00 on the first day of each month.

I find that the Landlord has submitted insufficient evidence to show that he served the Tenant with a Ten Day Notice to End Tenancy by registered mail on June 07, 2010. Although the Landlord has submitted proof that a package was mailed to the Tenant on that date, he has submitted insufficient evidence to refute the Tenant's evidence that the only Notice to End Tenancy in that package was the One Month Notice to End Tenancy that had been previously served on the Tenant. The burden of proving that the Ten Day Notice to End Tenancy was served rests with the Landlord, and I find that the Landlord has submitted insufficient evidence to establish that the package he mailed on June 07, 2010 contained the Ten Day Notice to End Tenancy.

**I find that the Ten Day Notice to End Tenancy that was dated June 07, 2010 was clearly received by the Tenant by XXXXXXXXX and that the Tenant had five days from that date to pay his outstanding rent.**

**As the Tenant's Application for Dispute Resolution has merit, I find that the Landlord is entitled to \$50.00 in compensation for the filing fee paid by the Landlord for this application.**

## Conclusion

I hereby grant the Landlord an Order of Possession that is effective on **March 31, 2008**. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

I also grant the Landlord a monetary Order in the amount of **\$50.00**, as compensation for the filing fee paid by the Landlord for this application. In the event that the Tenant does not voluntarily comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court, and enforced as an Order of that Court.

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*.

Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: July 13, 2010.

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Dispute Resolution Officer