



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing and Social Development

## DECISION

### Dispute Codes:

OPR, CNR, MNR, MNSD, RP, LRE, FF

### Introduction

This hearing was scheduled in response to cross applications.

On August 31, 2010 the Landlord filed an Application for Dispute Resolution, in which the Landlord has made application for a monetary Order for unpaid rent, to retain all or part of the security deposit, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution. On September 15, 2010 the Landlord amended the Application for Dispute Resolution to include an Order of Possession for Unpaid Rent.

On August 16, 2010 the Tenant filed an Application for Dispute Resolution, in which the Tenant has made application for an Order requiring the Landlord to make repairs; and for an Order suspending or setting conditions on the Landlord's right to enter the rental unit. September 08, 2010 the Tenant amended her Application for Dispute Resolution to include an application to set aside a Notice to End Tenancy for Unpaid Rent.

The Tenant contends that she also made application for a monetary Order for compensation in the amount of \$25,000.00. Although the Tenant has made a written notation on the front of a document that she submitted in evidence, in which she claims for compensation in this amount, I note that she did not amend her Application for Dispute Resolution to indicate that she is seeking a monetary Order in any amount.

The Tenant was advised that her application for compensation for damages to the rental unit was being refused, pursuant to section 59(5)(c) of the *Residential Tenancy Act* (*Act*), because her Application for Dispute Resolution did not provide sufficient particulars of her claim for compensation for damages, as is required by section 59(2)(b) of the *Act*. I find that a handwritten note that is added to the top of a document that is submitted in evidence cannot be considered adequate disclosure of the Tenant's intent to seek financial compensation. The Tenant retains the right to file an Application for Dispute Resolution seeking financial compensation.

Both parties were represented at the hearing. They were provided with the opportunity to submit relevant oral evidence, to ask relevant questions, and to make relevant submissions to me. On many occasions the Tenant was denied the opportunity to

discuss matters that I did not believe were relevant to the issues in dispute; she had difficulty answering direct questions; she became argumentative and disruptive when advised that she was required to pay rent and that the tenancy would be ending; and she repeatedly stated that she would not comply with an Order requiring her to vacate the rental unit. The Tenant exited the teleconference after being advised that I would not be ordering the Landlord to make repairs. The teleconference ended shortly after the Tenant exited the teleconference.

### 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 unpaid rent; to a monetary Order for unpaid rent; to keep all or part of the security deposit; and to recover the filing fee from the Tenant for the cost of the Application for Dispute Resolution, pursuant to sections 38, 55, 67, and 72 of the *Act*.

The issues to be decided in relation to the Tenant's Application for Dispute Resolution are whether the Notice to End Tenancy for Unpaid Rent should be set aside; whether there is a need to suspend or set conditions on the Landlord's right to enter the rental unit; and whether there is a need to order the Landlord to make repairs to the rental unit, pursuant to sections 29, 32, and 46(6) of the *Act*.

### Background and Evidence

The Landlord and the Tenant agree that this tenancy began on May 28, 2008; that the Tenant agreed to pay monthly rent of \$700.00 on the first day of each month; and that the Tenant paid a security deposit of \$350.00 on June 01, 2008.

The Landlord and the Tenant agree that the Tenant has not paid rent for September of 2010. The Tenant stated that she is refusing to pay rent until the Landlord makes the repairs that the Tenant believes are necessary to the rental unit.

The Landlord and the Tenant agree that the Tenant was personally served with a Ten Day Notice to End Tenancy for Unpaid Rent, which had an effective date of September 12, 2010, on September 02, 2010. The Notice declared that the Tenant owed \$725.00 in rent that was due on September 01, 2010. The female Landlord stated that the \$725.00 debt included rent from September and a fee of \$25.00 for not paying rent when it was due on September 01, 2010.

In support of her application for an Order suspending or setting conditions on the Landlord's right to enter the rental unit, the Tenant stated that she has reason to believe that the Landlord has entered her rental unit without her knowledge and permission. She stated that the photographs of the interior of the rental unit that were submitted in evidence by the Landlord were taken while she was out of the rental unit and that she did not give the Landlord permission to enter her rental unit to take those photographs.

The female and the male Landlord both stated that they were both in the rental unit on August 27, 2010 when the photographs were taken and that the Tenant was present in the rental unit when the photographs were taken. The Landlord and the Tenant both submitted a copy of an unsigned notification, which is dated August 26, 2010, in which the Landlord informed the Tenant that they will be entering the rental unit on August 27, 2010 at 9:00 a.m. to inspect the rental unit. The Tenant stated that after receiving this notice she told the Landlord that they could not enter the rental unit at that time.

The Tenant was advised that the Landlord will not be ordered to make repairs to the rental unit, given that I have made the determination that the tenancy will be ending two days after the Order of Possession is served to the Tenant, unless the Tenant was able to establish that repairs are required to ensure her immediate safety. The Tenant repeatedly made a request to have mould removed from the rental unit and to have the heating system repaired. After being repeatedly advised that those repairs did not constitute an immediate threat to her safety she was advised that I would not be considering her application for an order requiring the Landlord to repair the rental unit due to the fact that she will soon be obligated to vacate the rental unit.

### Analysis

The undisputed evidence is that the Tenant entered into a tenancy agreement with the Landlord that requires the Tenant to pay monthly rent of \$700.00 on the first day of each month. Section 26(1) of the *Act* requires tenants to pay rent to their landlord, whether or not the landlord complies with the Act, regulations or the tenancy agreement unless the tenant has a right under the Act to deduct all or a portion of the rent.

The undisputed evidence is that the Tenant did not pay rent for September of 2010. Although the Tenant clearly stated that she was refusing to pay rent for September until the Landlord repaired deficiencies with the rental unit, she provided no evidence to show that she had the right to withhold any portion of the rent that was due on September 01, 2010. As the Tenant is required to pay rent pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$700.00 in rent to the Landlord for September of 2010.

If rent is not paid when it is due, section 46 of the *Act* entitles landlords to end the tenancy within 10 days if appropriate notice is given to the tenant. The undisputed evidence is that the Tenant was personally served with a Notice to End Tenancy, pursuant to section 46 of the *Act*, which required her to vacate the rental unit by September 12, 2010. I find that the Landlord has the right to end this tenancy pursuant to section 46 of the *Act*, due to the fact that rent was not paid on September 01, 2010 and the Tenant was properly served with a Ten Day Notice to End Tenancy. On this basis, I find that the Landlord is entitled to an Order of Possession that is effective two days after the order is served upon the Tenant.

Section 29(1)(b) of the *Act* stipulates that a landlord must not enter into a rental unit unless the landlord gives the tenant written notice, at least 24 hours and not more than 30 days before the entry, in which the Landlord advises the Tenant of the purpose for

entering, which must be reasonable, and the date and the time of the entry, which must be between 8 a.m. and 9 p.m., unless the tenant otherwise agrees. I find that the Landlord complied with section 29 of the *Act* when they entered the rental unit on August 27, 2010, as they had gave her written notice of their intent to enter on August 26, 2010. I find that the Tenant did not have the right to deny the Landlord access to her rental unit after she was given the written notice and that the Tenant had the right to enter the rental unit on August 27, 2010 even if the Tenant was not at home.

After hearing the conflicting evidence of whether the Tenant was home when the pictures were taken, I favor the evidence of the Landlord over the evidence of the Tenant. In reaching this conclusion I was influenced by the testimony of both Landlords who said they were together when the pictures were taken and that the Tenant was present when they were taken. I found the evidence of these parties consistent and forthright. Given that the Landlord had lawful authority to enter the rental unit on August 27, 2010, it seems highly unlikely that they would need to enter the rental unit on a separate occasion to obtain the photographs that they submitted in evidence.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the filing fee from the tenant for the cost of this Application.

### Conclusion

I hereby grant the Landlord an Order of Possession that is effective two days after it is served upon the Tenant. 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 find that the Landlord has established a monetary claim, in the amount of \$750.00, which is comprised of \$700.00 in unpaid rent and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. The Landlord is hereby authorized to retain the Tenant's security deposit plus interest, in the amount of \$353.07, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$396.93. In the event that the Tenant does not 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.

The Tenant has not established that the Landlord has entered the rental unit in contravention of the *Act*, and I therefore dismiss the Tenant's application for an Order that sets conditions on the Landlord's right to enter the rental unit. The Landlord is reminded, however, that the Landlord is obligated to comply with section 29 of the *Act* when entering the rental unit. For the benefit of both parties, section 29 of the *Act* reads as follows:

- 29** (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
  - (i) the purpose for entering, which must be reasonable;
  - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
- (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
- (d) the landlord has an order of the director authorizing the entry;
- (e) the tenant has abandoned the rental unit;
- (f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

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: October 04, 2010.

---

Dispute Resolution Officer