



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## DECISION

Dispute Codes      CNR, MNSD, FF

### Introduction

This matter dealt with an application by the Tenant to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated February 2, 2011, for the return of a security deposit and to recover the filing fee for this proceeding.

During the hearing the Landlord confirmed that his given name is spelled incorrectly on the Application for Dispute Resolution and as a result, it is amended. During the hearing, the Tenant admitted that she was recording the proceedings. RTB Rule of Procedure 9.1 prohibits the private recording of a dispute resolution hearing. If a Party wishes to have a hearing officially recorded, they must comply with the procedure set out in RTB Rule of Procedure 9.2.

### Issue(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?
2. Is the Tenant entitled to the return of a security deposit?

### Background and Evidence

This tenancy started on or about June 2010. Rent is \$900.00 per month payable in advance on the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$450.00 at the beginning of the tenancy.

The Landlord said the Tenant did not pay rent for February 2011 when it was due and as a result, on February 2, 2011 he served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated February 2, 2011. The Tenant has not paid the outstanding rent for February 2011 as she claims the Landlord told her she could withhold her rent for that month to compensate her for enduring noise from other occupants in the rental property for the previous 4 month period.

The Parties disagree as to whether there was an agreement that the Tenant could withhold rent for February. The Landlord claimed that he was willing to give the Tenant free rent for this month only if she agreed to move out and not pursue any further compensation which the Tenant said she was unwilling to do. During the hearing, the

Tenant said she would be ending the tenancy on February 28, 2011 and as a result, the Parties agreed to resolve this matter on the terms set out below.

### Analysis

Section 63(2) of the Act says that “if the Parties settle their dispute during dispute resolution proceedings, the director may record the settlement in the form of a decision or an Order.” The Parties agreed to settle this matter on the following terms:

1. The Tenant agrees to withdraw her application to cancel the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated February 2, 2011;
2. The Parties agree the Landlord will receive an Order of Possession to take effect at 11:59 p.m. on February 28, 2011; and
3. This does not prevent the Tenant from making a claim for compensation or prevent the Landlord from making a claim for unpaid rent for February 2011.

Section 38(1) of the Act says that a Landlord has 15 days from either the end of the tenancy or the date he receives the Tenant’s forwarding address in writing (***whichever is later***) to either return the Tenant’s security deposit or to make an application for dispute resolution to make a claim against it. As the tenancy has not ended, I find that the Tenant’s application for the return of the security deposit is premature and it is dismissed with leave to reapply.

Given that the Tenant has withdrawn one part of her application and brought another prematurely, I find that this is not an appropriate case to order the Landlord to reimburse the Tenant for the \$50.00 filing fee for this proceeding and that part of her application is dismissed without leave to reapply.

### Conclusion

The Tenant’s application to cancel the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated February 2, 2011 is withdrawn. The Tenant’s application for the return of a security deposit is dismissed with leave to reapply. The Tenant’s application to recover the filing fee for this proceeding is dismissed without leave to reapply. An Order of Possession to take effect at 11:59 p.m. on February 28, 2011 has been issued to the Landlord. A copy of the Order must be served on the Tenant and may be enforced in the Supreme 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: February 16, 2011.

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Residential Tenancy Branch