



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

### **Dispute Codes:**

CNR, OPR, MNR, FF

### **Introduction**

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

The tenant sought to cancel a 10 Day Notice for Unpaid Rent (Notice to End) dated February 06, 2011.

The landlord sought an Order of Possession due to unpaid rent, a Monetary Order to recover rental arrears and inclusive of recovery of the filing fee associated with this application, and an order to retain the security deposit in partial satisfaction of the monetary claim.

Both parties appeared in the conference call hearing and participated with their submissions and testimony.

The tenant advised they are still residing in the rental unit.

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

Is the notice to end tenancy valid?

Should the Notice to End be cancelled?

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to the monetary amounts claimed?

### **Background and Evidence**

The testimony of the landlord and the tenant is that the tenancy began on October 01, 2009 when the landlord entered into a verbal agreement, renting the rental unit to tenant KB and a second renter, BK. The landlord testified that as he does not have a written agreement in his possession, it is conclusive to him that he rented the entire unit to both individuals for \$750 per month. KB disputes that his verbal agreement with the landlord was for the entire house at \$750. He claims that his agreement was to pay \$400 for only himself and that the landlord likely had a separate agreement with the second renter for the balance. The second renter subsequently vacated the rental unit in October 2010, leaving KB in the entire unit. The landlord claims the tenant has failed to pay all of the rent of \$750 per month since October 2010 when the second renter vacated, and as alleged by the 10 Day Notice to End for Unpaid Rent dated February 06, 2011 in which the tenant is alleged to owe \$2500 to date. Despite the document submission of the landlord, his testimony reflects the following, which is also in concert with the Notice to End.

Arrears up to October 01, 2010	\$750
October 2010	\$350
November 2010	\$350
December 2010	\$350
January 2011	\$350
February 2011	\$350
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<b>Total</b>	<b>\$2500</b>

The tenant claims that he received the 10 Day Notice on February 10, 2011. He also claims that his portion of the rent in the amount of \$400 has always been paid directly to the landlord by Social Assistance – sent to the landlord in the landlord's corporate

name. The landlord agrees that each month he has been receiving the tenant's rent addressed to the landlord's corporate name.

The landlord claims that his responsibilities to his ill mother prevented him from bringing this matter to resolution before issuing the Notice to End in February. The landlord claims that more recently he has not received any rent for March 2011 in any amount. He also claims that he is not sure as to on which date he gave the tenant the 10 Day Notice to End, and therefore does not dispute the tenant's claim that it was February 10, 2011.

### **Analysis**

On preponderance of all the evidence before me and on the balance of probabilities I have reached a decision.

In the absence of a written tenancy agreement I find the tenant's claim that his portion of the rent was higher than his previous co-tenant's is sufficiently ambiguous that I prefer the testimony of the landlord that the established rent for the rental unit was \$750. In so doing, I accept that the tenant has failed to pay a portion of the rent of \$750 per month since the second renter (BK) vacated in October 2010. However, I find that the landlord has failed to support his claim that prior to October 2010 there were arrears of \$750; and, that none of the rent for March has been paid. As a result, I will only take into account the landlord's claim that only part of the rent was satisfied for the period October 2010 to February 2011, in the aggregate of \$350 for each of those months, for a total of \$1750.

Therefore, 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 and that the tenant has not paid outstanding rent in the amount of \$1750.

The tenant's application **is hereby dismissed** without leave to reapply. 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 **\$1750** in unpaid rent. The landlord is also entitled to recovery of the \$50 filing fee, for a total entitlement of **\$1800**.

### **Conclusion**

The tenant's application is **dismissed**.

**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. 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 an order under Section 67 of the Act for the amount due of **\$1800**. If necessary, this order may be filed in the 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*.