



# 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 three Applications for Dispute Resolution.

The Landlord filed Application for Dispute Resolution #A on March 14, 2011, in which the Landlord has made application for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

The Landlord filed Application for Dispute Resolution #B on March 14, 2011, in which the Landlord has made application for monetary Order for damages to a rental unit in the same residential complex that the Tenants occupied prior to moving into the rental unit that is the subject of this dispute resolution proceeding and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

Section 73(1) of the *Residential Tenancy Act (Act)* stipulates that if two or more applications for dispute resolution are accepted in respect of related disputes with the same landlord and tenant, the director may hear the disputes together. I find that one of the Respondents named in Application #244882 is a Tenant and the other is an occupant, and that both of the Respondents named in Application #244883 are Tenants. I therefore find that the matters should be determined independently and Application #B will be rescheduled to another date and time.

The Tenant/Occupant filed Application for Dispute Resolution #C on January 19, 2011, in which they applied for a monetary Order for money owed or compensation for damage or loss in relation to a rental unit in the same residential complex that they occupied prior to moving into the rental unit that is the subject of this dispute resolution proceeding and to recover the filing fee from the Landlord for the cost of this Application for Dispute Resolution.

The Tenant/Occupant amended Application for Dispute Resolution #C on February 17, 2011 to include an application to cancel a Notice to End Tenancy for the rental unit that is the subject of this dispute resolution proceeding.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application with or without leave to reapply. For disputes to be combined on an application they must be related. As the Tenant/Occupant's application for a monetary Order for money owed or compensation for damage or loss relates to a different rental unit than their application to cancel a Notice to End Tenancy, I have determined that I will not deal with all the dispute issues they included in their application. I find that the claims on this application are not sufficiently related to be dealt with together.

As the Tenant/Occupant's application to set aside the Notice to End Tenancy is the most pressing issue in their Application for Dispute Resolution, I will deal with that portion of their Application for Dispute Resolution and their application to recover the cost of filing their Application for Dispute Resolution. I dismiss the Tenant/Occupant's for a monetary Order for money owed or compensation for damage or loss that relates to their previous tenancy with leave to reapply. The Tenant/Occupant retain the right to file another Application for Dispute Resolution for a monetary Order for money owed or compensation for damage or loss in relation to their previous tenancy and to recover the filing fee from the Landlord for the cost of the new Application for Dispute Resolution.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

#### Issue(s) to be Decided

The issues to be decided are whether the Notice to End Tenancy for Unpaid Rent should be set aside, whether the Landlord is entitled to an Order of Possession for unpaid rent, whether the Landlord is entitled to a monetary Order for unpaid rent, and whether either party is entitled to recover the filing fee for the cost of the Application for Dispute Resolution, pursuant to sections 55, 67, and 72 of the *Act*.

#### Background and Evidence

The Landlord, the Tenant, and the Occupant agree that the Tenant and the Occupant lived in unit #6 prior to moving into unit #10 in this residential complex. The parties agree that they had a written tenancy agreement for unit #6, which named both the Tenant and the Occupant, that required them to pay rent of \$650.00 per month.

The Landlord, the Tenant, and the Occupant agree that the Tenant/Occupant ended their tenancy in unit #6 because they wanted to move into a larger unit in the same residential complex. The parties agree that the Landlord and the Tenant agreed that the Tenant and the Occupant would move into unit #10 in this residential complex.

The Tenant stated that he and the Landlord had not reached an agreement on the amount of rent for unit #10 by the time he and the Occupant moved into the rental unit,

although they discussed that it would be somewhere between \$750.00 and \$800.00 per month. He stated that he understood rent would be due on the first day of each month.

The Landlord stated that they discussed whether rent would be \$800.00 or \$850.00 per month, and that they agreed on \$800.00 per month. He stated that the Tenant understood that rent would be due on the first day of each month

The Landlord, the Tenant, and the Occupant agree that the Occupant was not present when the Landlord and the Tenant discussed rent and that she did not subsequently reach an agreement to pay rent for unit #10.

The Landlord, the Tenant, and the Occupant agree that a written tenancy agreement was not created, although the Tenant and the Occupant clearly indicated they wished to enter into a written tenancy agreement.

The Landlord made reference to the Tenants' Compensation Request, dated January 17, 2011, which the Tenant/Occupant sent to the Landlord. Both parties had this document with them at the time of the hearing and it was considered as evidence. In this Compensation Request the Tenant/Occupant requested "2 months of rent in "the newly renovated trailer" (\$800/month) as compensation for damaged property..."

The Landlord and the Tenant agree that the Tenant paid rent of \$650.00 on February 01, 2011 and \$650.00 on March 01, 2011. The Landlord is seeking compensation, in the amount of \$150.00, for unpaid rent from February and \$150.00 for unpaid rent from March.

The Landlord and the Tenant agree that a Ten Day Notice to End Tenancy for Unpaid Rent, which had a declared effective date of February 08, 2011, was posted on the door of the rental unit. The Notice declared that the Tenant owed \$150.00 in rent that was due on February 01, 2011. The Landlord was unable to recall when the Notice to End Tenancy was posted and the Tenant stated that the Notice was located on the door on February 12, 2011.

### Analysis

The *Act* defines a "tenancy agreement" as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit. I find that the Landlord and the Tenant entered into an oral tenancy agreement in which he agreed to pay the Landlord money for the right to possess the rental unit.

I find that the Landlord and the Tenant had a verbal tenancy agreement regardless of the fact that the Landlord failed to prepare a written tenancy agreement, as is required by section 13(1) of the *Act*. The fact that the Tenant and the Occupant moved into the

rental unit and paid some rent for the unit convinces me that a tenancy had been created.

I favor the evidence of the Landlord, who stated that the Tenant agreed to pay rent of \$800.00, over the evidence of the Tenant, who stated the parties had not clearly established the amount of rent due. In reaching this conclusion I was heavily influenced by the Tenants' Compensation Request, dated January 17, 2011, which the Tenant/Occupant sent to the Landlord, in which they request two months of rent in "the newly renovated trailer" (\$800/month) as compensation for damaged property. I find the Tenant/Occupant's reference to rent of \$800.00 per month corroborates the Landlord's claim that the Tenant had agreed to pay rent of \$800.00 and refutes the Tenant's claim that they had not agreed on the amount of rent due.

I find that the Occupant clearly indicated her intent to enter into a written tenancy agreement with the Landlord however I find that she did not enter into a verbal tenancy agreement with the Landlord. In reaching this conclusion I was heavily influenced by the undisputed evidence that the Landlord and the Occupant did not agree on the amount of rent to be paid. As these parties did not come to a clear agreement on the rent that was due, I cannot conclude that they had an agreement. On this basis, I find that the Occupant was not obligated to pay rent to the Landlord and I dismiss the Landlord's application for a monetary Order that names the female Tenant.

Section 26(1) of the *Act* requires tenants to pay rent to their landlord, whether or not the landlord complies with the *Act*. I find that the Tenant was obligated to pay rent of \$800.00 per month, regardless of the fact they did not have a written tenancy agreement. As the Tenant paid \$650.00 in rent for February of 2011, I find that he still owes the Landlord \$150.00 in rent for February. As the Tenant paid \$650.00 in rent for March of 2011, I find that he still owes the Landlord \$150.00 in rent for March.

If rent is not paid when it is due, a tenancy may be ended pursuant to section 46 of the *Act*. On the basis of the undisputed evidence presented at the hearing, I find that a Ten Day Notice to End Tenancy was posted on the door of the rental unit. On the basis of the Tenant's testimony and in the absence of evidence to the contrary, I find that this Notice was received by the Tenant on February 12, 2011.

Section 46(1) of the *Act* stipulates that a 10 Day Notice to End Tenancy is effective ten days after the date that the tenant receives the Notice. As the Tenant received the Notice on February 12, 2011, I find that the earliest effective date of the Notice was February 22, 2011.

Section 53 of the *Act* stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of this Notice to End Tenancy was February 22, 2011.

As the Tenant had not paid all of the rent that was due on February 01, 2011 and the Landlord properly served the Tenant with a Ten Day Notice to End Tenancy, I find that the Landlord had grounds to end this tenancy pursuant to section 46 of the *Act*. On this basis I dismiss the Tenant/Occupant's application to set aside the Notice to End Tenancy and I grant the landlord an Order of Possession that is effective two days after the order is served upon the Tenant.

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 for Dispute Resolution.

I find that the Tenant/Occupant's application has been without merit and I dismiss their application to recover the filing fee from the Landlord for the cost of this Application for Dispute Resolution.

### Conclusion

I hereby grant the Landlord an Order of Possession that is effective two days after it is served upon the Tenant. **In the event that the Tenant has paid rent of \$800.00 for April to the Landlord by April 11, 2011, this Order may not be served to the Tenant until April 28, 2011. In the event that the Tenant has not paid rent of \$800.00 for April to the Landlord by April 11, 2011, this Order may be served to the Tenant on, or after, April 12, 2011.** This Order may be served on the Tenant in accordance with the aforementioned timelines, 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 \$350.00, which is comprised of \$300.00 in unpaid rent and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. Based on these determinations I grant the Landlord a monetary Order for the amount of \$350.00. 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.

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: April 04, 2011.

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Residential Tenancy Branch