



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

Tenant's application: MT; OLC; ERP; RP; LRE; AAT; AS; FF; O

Landlords' application: OPR; MNR; MNSD; FF; O

### **Introduction**

This Hearing was convened to consider cross applications. The Tenant seeks more time to file an application to cancel a 10 day Notice to End Tenancy for Unpaid Rent; for Orders that the Landlords comply with the Act, regulation or tenancy agreement, make emergency and regular repairs to the rental unit, suspending or setting conditions on the Landlords' right to enter the rental unit, allowing the Tenant and his guests access to the rental unit, allowing the Tenant to assign or sublet the rental unit; and to recover the cost of the filing fee from the Landlords.

The Landlords seek a Order of Possession; a Monetary Order for unpaid rent and late fees; to retain the security deposit in partial satisfaction of the Landlords' monetary award; and to recover the cost of the filing fee from the Tenant.

Both parties gave affirmed testimony at the Hearing.

### **Preliminary Matters**

The Tenant did not specifically note that he wished to cancel the Notice to End Tenancy on his Application, however he did apply for more time to apply to cancel the Notice. It was clear from the parties' evidence that the Tenant was seeking to cancel the 10 Day Notice to End Tenancy (the "Notice") and therefore, I amended the Tenant's application to include the Tenant's application to cancel the Notice.

The Residential Tenancy Rules of Procedure, Rule 2.3, states that for disputes to be combined on an application they must be related. I find that that the Tenant's requests

for Orders are not sufficiently related to the main issue, which is to cancel the Notice. For these reasons, I dismissed the Tenant's application for those Orders **with leave to reapply**.

### **Issues to be Decided**

1. Should the Tenant be granted more time to file his application to cancel the Notice?
2. Is the Notice a valid Notice to End Tenancy?
3. Are the Landlords entitled to a Monetary Order for unpaid rent and late fees?

### **Background and Evidence**

The parties agreed on the following facts:

- This tenancy started on November 22, 2010. Monthly rent is \$750.00, due on the first day of each month. The Tenant paid a security deposit and a pet damage deposit at the beginning of the tenancy, each in the amount of \$375.00, for a total of \$750.00 in deposits.
- The Landlords issued the Notice on June 2, 2011, and served it on the Tenant the same day by handing the Notice to the Tenant at the rental unit.
- The Notice indicates the Tenant owes rent in the amount of \$550.00 that was due on June 1, 2011.
- The Tenant has not paid the outstanding rent of \$550.00.

The Tenant testified that he did not pay the rent because of all of the outstanding issues he had with the Landlord. He testified that he thought he could withhold rent until determination of his Application for Dispute Resolution.

### **Analysis**

Section 46 of the Act requires a tenant to file an application disputing a 10 day Notice to End Tenancy within 5 days of being served with the Notice. In this case, the Tenant filed his application 4 days after being served with the Notice and therefore his application for more time is dismissed, as it is not required.

Section 26 of the Act requires a tenant to pay rent when it is due unless the tenant has a right under the Act to deduct all or a portion of the rent. In this case, the Tenant did not have a right under the Act to withhold the rent.

Neither party provided a copy of the Notice in evidence. I advised the parties that I would allow the Landlord to fax in the Notice after the Hearing and that I would provide them with my Decision once I had taken the opportunity to confirm whether it was a valid Notice. The Notice that was faxed in by the Landlord is **not** a valid Notice. It discloses a **different address** for the rental unit than the address both parties indicate on their Applications for Dispute Resolution. In addition, the Tenant provided me with his address again at the end of the Hearing and it is the same address as the address on both Applications, but different from the address on the Notice. For this reason, I grant the Tenant's application to cancel the Notice. Likewise, the Landlord's application for an Order of Possession is dismissed. The tenancy remains in full force and effect until it is ended in compliance with the provisions of the Act.

The Tenant agreed that he owes rent in the amount of \$550.00. There is a clause in the tenancy agreement that provides for late fees. The Landlord's application for a Monetary Order is granted in the amount of \$570.00 (unpaid rent and \$20.00 late fee). The Tenant is cautioned that rent **must be paid when it is due**. I hereby provide the Landlord a Monetary Order against the Tenant in the amount of \$570.00.

The tenancy has not ended and therefore the Landlords' application to apply the security deposit towards satisfaction of their monetary award is dismissed. The security deposit remains available on application by either party, to be applied in accordance with the provisions of Section 38 of the Act at the end of the tenancy.

Both parties have been partially successful and I order that they each bear the cost of filing their applications.

### **Conclusion**

The Tenant's application to cancel the 10 Day Notice to End Tenancy issued June 2, 2011, is **granted**. The tenancy remains in full force and effect until it is ended in accordance with the provisions of the Act.

The remainder of the Tenants' application is **dismissed with leave to reapply**.

The Landlords' application for an Order of Possession is **dismissed**.

I hereby provide the Landlords with a Monetary Order in the amount of **\$570.00** for service upon the Tenant. This Order may be filed in the Provincial Court of British Columbia (Small Claims Court) and enforced as an Order of that Court.

The security deposit remains available upon application by either party, to be applied in accordance with the provisions of Section 38 of the Act at the end of the tenancy.

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: June 28, 2011.

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Residential Tenancy Branch