



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, OPL, MNR, MNSD, FF  
CNC, CNL, O

### Introduction

This hearing dealt with cross application by the landlord and tenant. The application by the landlord is for an order of possession for unpaid rent, an order of possession for landlord's use of property, a monetary order for unpaid rent, to keep all or part of the security deposit and recovery of the filing fee. The application by the tenant is to cancel a notice to end tenancy for cause, to cancel a notice to end tenancy for landlord's use of property and other. Both parties participated in the conference call hearing and gave affirmed testimony.

### Issue(s) to be Decided

Is either party entitled to any of the above under the Act.

### Background and Evidence

This tenancy began October 30, 2010 with monthly rent of \$700.00 and the tenant paid a security deposit of \$350.00.

- On May 25, 2011 the landlord served the tenant with a 1 Month Notice to End Tenancy for Cause. The tenant did not dispute this notice within the required time period.
- On June 1, 2011 the landlord served the tenant with a 2 Month Notice to End Tenancy for Landlord's Use of Property. The tenant did not dispute this notice within the required time period.
- On July 4, 2011 the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent. The tenant did not dispute this notice within the required time period.

The landlord testified that the tenant has not paid rent for the months of January, February, March, April, May, July and August 2011 and owes the landlord \$4900.00 in unpaid rent. The landlord notes that they did provide the tenant receipts for each month the tenant paid rent and has submitted copies of the receipts provided for November, December 2010 and June 2011 rent. As the tenant still occupies the rental unit the landlord is requesting an order of possession.

The landlord also stated that the tenant had committed fraud when she filled out a tenancy agreement and had the landlord's minor son sign the tenancy agreement. It was explained to the landlord that the issue of the tenancy agreement is not a part of this application and fraud is not a matter which the Residential Tenancy Branch has jurisdiction over.

The tenant testified that all of the rent has been paid in full with the exception of the August 2011 rent which has not been paid because the tenant was coming to arbitration. The tenant stated that the rent was always paid in cash, half by her and half by her boyfriend but that the landlord refused to provide receipts. The tenant stated that she is also entitled to one month's compensation for the 2 month notice she was given by the landlord. The tenant stated in this hearing that she would be vacating the rental unit by Sunday, August 14<sup>th</sup> as she is in the process of relocating to Vancouver Island.

The tenant stated that on July 9, 2011 the fridge, which is plugged into an outlet in the landlord's unit, was not working and the tenant had \$200.00 worth of food spoiled. The landlord stated that the tenant was attempting to pull the fridge plug out by pulling on it from under the door and in the process was loudly banging on the door and ultimately damaged the door. The landlord stated that the police were called to deal with the disruption being caused by the tenant and that the police checked the tenant's fridge when on site and advised the landlord that the fridge was cold and that the tenant had advised the police that the fridge was OK.

The tenant made a request during the hearing to discuss compensation for all of the problems she incurred with this tenancy however the tenant's application does not include a claim for compensation other than the \$200.00 for spoiled food and this was explained to the tenant.

### Analysis

Based on the documentary evidence and testimony of the parties I find that the landlord has met the burden of proving that they are entitled to an order of possession based on the undisputed 1 Month Notice to End Tenancy for Cause served May 25, 2011. The tenant did not apply for dispute resolution to dispute the notice within the required 10 day time period and is therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the notice which is June 30, 2011.

As the 1 Month Notice to End Tenancy for Cause is in effect the 2 Month Notice to End Tenancy for Landlord's Use of Property served June 1, 2011 and the 10 Day Notice to End Tenancy for Unpaid Rent served July 4, 2011 are hereby set aside.

Based on the documentary evidence and testimony of the parties I find that the landlord has met the burden of proving that they are entitled to a monetary order for unpaid rent. The tenant did not provide any evidence such as bank statements to show that the rent

had in fact been paid each month. And while the tenant claims that the landlord refused to provide receipts for cash rent payments, the landlord has in fact provided the tenant receipts for the months when rent was paid which verifies the landlord's testimony. The tenant makes claim to 1 month's rent compensation for the 2 month notice that the landlord served on the tenant however this notice is not in effect which results in there not being a requirement for rent compensation on the part of the landlord.

Accordingly I find that the landlord is entitled to a monetary order for \$4900.00 in unpaid rent.

Based on the documentary evidence and testimony of the parties I find that the tenant has not met the burden of proving that they are entitled to have the 1 Month Notice to End Tenancy for Cause set aside as the tenant did not dispute the notice within the required time period as specified on the notice. This portion of the tenant's application is hereby dismissed without leave to reapply.

*'If you do not file an Application within 10 days, you are presumed to accept this Notice and must move out of the rental unit or vacate the site by the date set out on page 1 of this Notice (You can move out sooner.) If you do not file an Application, move or vacate, your landlord can apply for an Order of Possession that is enforceable through the court.'*

Based on the documentary evidence and testimony of the parties I find that the tenant has not met the burden of proving that they are entitled to a monetary order for \$200.00 compensation for spoiled food. The tenant has not established that any such loss was incurred because of negligence or an intentional act on the part of the landlord. This portion of the tenant's application is hereby dismissed without leave to reapply.

As the landlord has been successful in their application the landlord is entitled to recovery of the \$50.00 filing fee.

### Conclusion

I hereby grant the landlord an **Order of Possession**, effective **2 days** after service of the Order upon the tenant. This Order must be served on the tenant and may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I find that the landlord has established a monetary claim for \$4900.00 in unpaid rent. The landlord is also entitled to recovery of the \$50.00 filing fee. I order the landlord pursuant to s. 38(4) of the Act to keep the tenant's \$350.00 security deposit in partial satisfaction of the claim and I grant the landlord a monetary order under section 67 for the balance due of **\$4600.00**.

If the amount is not paid by the tenant, the Order may be filed in the Provincial (Small Claims) Court of British Columbia and enforced as an order of that court.

The tenant's application is hereby dismissed in its entirety without leave to reapply with the resulting effect that the tenancy effectively ended on June 30, 2011 at 1:00 PM.

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: August 9, 2011.

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Residential Tenancy Branch