



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

CNC  
OPR, OPC, MNR, MNDC, MNSD, FF

### **Introduction**

This matter dealt with an application by the Tenant to cancel a One Month Notice to End Tenancy for Cause dated July 28, 2011. The Landlord applied for an Order of Possession and a Monetary Order for unpaid rent and utilities, to recover the filing fee for this proceeding and to keep the Tenant's security deposit in partial payment of those amounts.

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

1. Does the Landlord have grounds to end the tenancy?
2. Are there rent arrears and if so, how much?
3. Is the Landlord entitled to keep the Tenant's security deposit?

### **Background and Evidence**

The rental unit is one of two suites in the rental property. On June 15, 2011, the Tenant entered into a one year fixed term tenancy commencing on June 15, 2011. Rent is \$850.00 per month payable in advance on the first day of each month plus one-half of the utilities (gas and hydro) for the rental property. The Tenant paid a security deposit of \$425.00 at the beginning of the tenancy.

The Parties agree that on July 30, 2011, the Landlord served the Tenant in person with a One Month Notice to End Tenancy for Cause dated July 28, 2011. The Tenant initially said she told the Landlord that she had the money to pay him rent for August 2011 but once she got the Notice she became emotional and the Landlord left without it. The Tenant later said she did not have the rent money on her and by the time she returned from the bank, the Landlord was no longer at the rental property. The Tenant admitted that she received a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated August 2, 2011 in person on August 2, 2011 from an agent for the Landlord.

The Tenant said she tried to contact the Landlord on a number of occasions over the following 2 weeks to make arrangements for paying rent for August 2011 but he did not return any of her calls. Consequently, the Tenant argued that she did not pay the rent

for August 2011 because she was unsure how to pay the Landlord who she believed was avoiding her. The Landlord denied that the Tenant left him any telephone messages and said instead that he was at the rental property a few days after he gave the Tenant the 10 Day Notice and asked her for the rent but she refused and told him that he would have to pay her \$1,700.00 to get her to move out. The Landlord said the Tenant at all times had his address and could have also sent him her rent payment by mail if necessary.

The Tenant also argued that the Landlord was seeking to evict her because the other tenants in the rental property did not like her children or guests. The Tenant said she believes that the other tenants in the rental property told the Landlord that if he did not evict her, they would move out. Consequently, the Tenant said it was the Landlord who approached her after giving her the Notices and apologized for giving her the Notices and offered to pay her \$1,700.00 if she would move out.

### Analysis

Section 46(4) of the Act states that within 5 days of receiving a Notice to End Tenancy for Unpaid Rent or Utilities, a Tenant must either pay the overdue rent or (if they believe the amount is not owed) apply for dispute resolution. If a Tenant fails to do either of these things, then under section 46(5) of the Act, they are conclusively presumed to have accepted that the tenancy will end on the effective date of the Notice and they must vacate the rental unit at that time.

I find that the Landlord's agent served the Tenant in person on August 2, 2011 with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated August 2, 2011. Consequently, the Tenant would have had to pay the amount stated as rent arrears on the Notice or apply for Dispute Resolution to dispute that amount no later than August 8, 2011 (given that the 7<sup>th</sup> fell on a non-business day). I find that the Tenant did not pay the overdue rent and has not applied for dispute resolution to cancel this Notice. Although the Tenant argued that she did not pay the rent because she did not know what to do, I give little weight to this argument for the following reasons.

Firstly, s. 26 of the Act places the onus *on the Tenant* to pay rent when it is due. The Tenant admitted that the Parties did not have an established arrangement for paying the rent and she also admitted that she had the Landlord's address for service which was written on her copy of the tenancy agreement. Consequently, even if the Landlord was avoiding the Tenant after she received the 10 Day Notice as she claimed (and I make no finding in that regard), I find that the Tenant could still have delivered her rent payment to the Landlord by mail and I note that this was the same address to which she served the Landlord with her hearing package in this matter.

Secondly, I find that the Tenant's assertion that she was willing to pay the rent but could not contact the Landlord is not supported by any reliable evidence. In particular, the

Tenant initially claimed that she had the rent to pay the Landlord on July 30, 2011 but that she became emotional when the Landlord served her with the One Month Notice and the Landlord left without it. However, the Tenant later claimed that she did not have the rent money with her at that time. The Tenant also claimed that she was unable to contact with the Landlord after receiving the 10 Day Notice but then claimed that the Landlord later approached her and offered to pay her \$1,700.00 to move out. Consequently, I find it more likely that after the Tenant received the One Month Notice to End Tenancy on July 30, 2011, she refused to pay the rent for August 2011.

As a result of the foregoing, I find that the Landlord is entitled to an Order of Possession pursuant to s. 55(2)(b) of the Act to take effect 2 days after service of it on the Tenant. As the Landlord has established grounds for ending the tenancy on the basis of the 10 Day Notice to End Tenancy for Unpaid Rent, I find that it is unnecessary to determine if the Landlord also had grounds to end the tenancy for reasons set out on the One Month Notice to End Tenancy for Cause dated July 28, 2011. Consequently, the Tenant's application to cancel the One Month Notice is dismissed without leave to reapply.

Accordingly, I also find that the Landlord is entitled to recover rent arrears in the amount of \$825.00 as well as the \$50.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38(4) of the Act to keep the Tenant's security deposit in partial payment of the rent arrears. The Landlord will receive a Monetary Order for the balance owing as follows:

Rent arrears:	\$850.00
Filing fee:	<u>\$50.00</u>
Subtotal:	\$900.00
Less: Security Deposit:	(\$425.00)
Accrued Interest:	<u>(\$0.00)</u>
Balance Owing:	\$475.00

The Landlord also sought to recover unpaid gas expenses of \$22.50 for the month of July 2011, however, the Tenant claimed that she never received a copy of the invoice relating to this charge and Landlord did not provide any evidence of it at the hearing. Consequently, I find that there is insufficient evidence to support the Landlord's claim for unpaid utilities and that part of his application is dismissed without leave to reapply. The Landlord further sought to recover a loss of rental income for September 2011. However, s. 7(2) of the Act states that a party who suffers damages must do whatever is reasonable to minimize their losses. This means that a landlord must try to re-rent a rental unit as soon as possible to minimize a loss of rental income. As there is no evidence that the Landlord will suffer a loss of rental income for September 2011 and given that the Landlord has a duty under the Act to take reasonable steps to re-rent it, I find that the Landlord's application for a loss of rental income is premature and it is dismissed with leave to reapply.

Conclusion

The Tenant's application is dismissed without leave to reapply. The Landlord's application for a loss of rental income is dismissed with leave to reapply. An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of **\$475.00** have been issued to the Landlord. A copy of the Orders must be served on the Tenant; the Order of Possession may be enforced in the Supreme Court of British Columbia and the Monetary Order may be enforced in the Provincial (Small Claims) 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: August 30, 2011.

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Residential Tenancy Branch