



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes For the tenant-CNR, MNDC, MNSD, OLC, PSF, RPP, LRE, AAT, O  
For the landlord-OPR, MNR

### Introduction

This hearing dealt with the cross applications of the parties for dispute resolution under the Residential Tenancy Act (the “Act”).

The tenant applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent, for a monetary order for money owed or compensation for damage or loss, an order for a return of her security deposit, for an order requiring the landlord to comply with the Act, to provide for services required by law, suspending or setting conditions on the landlord’s right to enter the rental unit and allowing access to the rental unit.

The landlord applied for an order of possession and for a monetary order for unpaid rent.

The tenant and her witness and the landlord and her witness appeared at the hearing. The hearing process was explained to the parties. Thereafter the tenant and the landlord and witness gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and respond each to the other and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

As a preliminary issue, I have determined that the portion of the tenant’s application dealing with a request for orders for the landlord’s compliance with the *Residential Tenancy Act (the “Act”)*, suspending or setting conditions on the landlord’s right to enter the rental unit, providing for services or facilities required by law, requiring the landlord to return the tenant’s personal property, allowing access to the rental unit and requesting a monetary order is unrelated to the primary issue of disputing the Notice.

As a result, pursuant to section 2.3 of the Residential Tenancy Branch Rules of Procedure, I have severed the tenant's Application and dismissed that portion of the tenant's request for orders and authorizations under the Act, **with leave to reapply**.

The hearing proceeded only upon the tenant's application to cancel a Notice to End Tenancy for Unpaid Rent and on the landlord's application.

#### Issue(s) to be Decided

Is the tenant entitled to an order cancelling the Notice to End Tenancy for Unpaid Rent?

Has the tenant breached the *Residential Tenancy Act* or tenancy agreement, entitling the landlord to an order of possession, a monetary order for unpaid rent and to recover the filing fee?

#### Background and Evidence

The parties agreed that this month to month tenancy started on August 1, 2011, monthly rent is \$600.00, due on the first day of the month, and the tenant paid a security deposit of \$300.00 on or about August 1, 2011.

Pursuant to the Residential Tenancy Branch Rules of Procedure, the landlord proceeded first in the hearing to explain or support the Notice to End Tenancy.

The landlord stated the tenant was delivered a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"), via posting on the door on January 5, 2012, listing an amount of \$570.00 in unpaid rent as of January 1, 2012. The effective move out date was January 15, 2012, which automatically self-corrects under the Act to January 18, 2012.

The landlord submitted that the tenant has not made any payments of rent since the issuance of the Notice, and that she is seeking an order of possession based upon that non-payment and a monetary order for \$570.00.

In response, the tenant claimed the landlord has locked her out of her rental unit and that she has not been allowed to return.

The landlord denied that the tenant was locked out and that the lock has been changed due to the three times the tenant has broken the lock. The landlord submitted that the tenant has been and is allowed access to her rental unit.

### Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

#### **Landlord's Application:**

Where a tenant fails to pay rent when due, the landlord may serve the tenant with a 10 Day Notice for Unpaid Rent. Upon receipt of the 10 Day Notice, the tenant must pay the outstanding rent or dispute the Notice within five days. In this case, I find that the tenant disputed the Notice. Where a Notice is disputed, the tenant must be able to show that she does not owe to rent to the landlord or had some other legal right to withhold rent.

Upon hearing from the parties, along with the tenant's confirmation, I am satisfied that the tenant owed the landlord rent when the Notice was issued, that she did not pay the outstanding rent to the landlord within five days of receiving the Notice and the tenant did not establish that she had the legal right to withhold the rent owed.

I therefore find that the landlord is entitled to an order of possession effective **two days** after service on the tenant.

I am enclosing an order of possession with the landlord's Decision. This order is a **legally binding, final order**, and may be filed in the Supreme Court of British Columbia should the tenant fail to comply with this order of possession.

I find that the landlord has established a monetary claim for **\$570.00** for unpaid rent for January 2012.

I **grant** the landlord a monetary order under section 67 of the Act for **\$570.00**, comprised of unpaid rent.

I am enclosing a Monetary Order for \$570.00 with the landlord's Decision. This Order is a **legally binding, final Order**, and may be filed in the Provincial Court of British Columbia (Small Claims) should the tenant fail to comply with this Monetary Order.

**Tenant's application:**

Due to the above, the tenants' Application for Dispute Resolution seeking a cancellation of the Notice is **dismissed without leave to reapply** as the Notice to End Tenancy issued is valid and enforceable.

I dismiss the portion of the tenant's application dealing with request for orders and authorizations under the Act, **with leave to reapply**.

Conclusion

The landlord is granted an order of possession and a monetary order in the amount of \$570.00

The tenant's application to cancel the 10 Day Notice to End Tenancy is dismissed, without leave to reapply.

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: January 31, 2012.

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Residential Tenancy Branch