



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

CNR, MT, OPR, MNR, MNSD, FF

### Introduction

This hearing was convened in response to cross applications.

The Landlord filed an Application for Dispute Resolution, in which the Landlord has made application for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, to retain all or part of the security deposit, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution. I find that it is apparent from the information on the Application for Dispute Resolution that the Landlord is seeking compensation for rent/loss of revenue for January, as she clearly indicates she is seeking compensation for January in the amount of \$715.00. I therefore have amended the Landlord's Application for Dispute Resolution to include a claim for money owed or compensation for damage or loss.

I decline to consider whether compensation is due for late payment of rent, as the Landlord has not clearly informed the Tenant of her intent to claim compensation for late payment of rent. Although a fee for paying rent late is included in the total monetary claim, the Application for Dispute Resolution does not clearly convey that this claim is being made.

The Tenant filed an Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Unpaid Rent and for more time to make this application.

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.

The Tenant acknowledged receipt of the Landlord's Application for Dispute Resolution on December 16, 2011. The Landlord submitted documents to the Residential Tenancy Branch, copies of which were served to the Tenant on December 26, 2011 or December 27, 2011. The Tenant stated that she received the Landlord's evidence on December 27, 2011 and it was accepted as evidence for these proceedings.

The Tenant submitted documents to the Residential Tenancy Branch. The Tenant stated that on December 29, 2011 she served an agent for the Landlord with her

Application for Dispute Resolution and copies of the documents she submitted to the Residential Tenancy Branch which were served to the Landlord. The Landlord stated that this particular agent ceased being her agent on December 30, 2011 and she has not yet received those documents from her former agent.

The Landlord was advised of the details of the Tenant's Application for Dispute Resolution and the nature of the Tenant's evidence. She indicated that she wished to proceed with the hearing on this date as she did not wish the matter delayed. She was advised that she could request an adjournment at any point in the hearing if she felt it necessary to view the Tenant's evidence.

The Tenant request an adjournment on the basis that she has had insufficient time to submit evidence in response to the Landlord's claim. I find that the Tenant has submitted evidence in response to the Landlord's claim and that she served this evidence to the Landlord on December 30, 2011. As the Landlord indicated she was willing to proceed in spite of the fact she does not have the evidence submitted by the Tenant, I declined the Tenant's application for an adjournment.

The Tenant was advised that I would reconsider her request for an adjournment if at any point in the hearing she raised an issue that would cause me to conclude that additional evidence was available to support her application to set aside the Notice to End Tenancy or that would show she was not obligated to pay rent when it was due. At no point in the hearing did the Tennant make reference to evidence or arguments that would cause me to alter my decision in this matter.

In declining the Tenant's application for an adjournment I was heavily influenced by the fact that this dispute arises from a failure to pay rent and from the Landlord's attempt to end this tenancy. I find that an adjournment would significantly disadvantage the Landlord, as the Tenant has not been paying rent and the Tenant would remain in the rental unit while additional debt accrued.

#### Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to an Order of Possession for unpaid rent or whether the Notice to End Tenancy should be set aside; whether the Tenant should be granted more time to make an application to set aside the Notice to End Tenancy; whether the whether the Landlord is entitled to a monetary Order for unpaid rent/loss of revenue; whether the Landlord is entitled to keep all or part of the security deposit; and whether the Landlord is entitled to recover the filing fee from the Tenant for the cost of the Application for Dispute Resolution, pursuant to sections 38, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The Landlord and the Tenant agree that this tenancy began on November 15, 2011; that the Tenant is required to pay monthly rent of \$715.00 by the first day of each month; and that the Tenant paid a security deposit of \$357.50.

The Landlord and the Tenant agree that the Tenant paid \$365.00 in rent for December of 2011; that she still owes \$365.00 in rent for December of 2011; and that no rent was paid for January of 2012. The Tenant stated that she has been unable to pay the rent as she is experiencing financial difficulties.

The Tenant stated that she discussed the possibility of her working for the Landlord with two agents for the Landlord in an effort to pay the rent that was due, but the Landlord declined that payment option.

The Landlord stated that she understands her agent personally served the Tenant with a Ten Day Notice to End Tenancy for Unpaid Rent on December 02, 2011, which had an effective date of December 12, 2011. The Notice declared that the Tenant owed \$390.00 that was due on December 01, 2011. The Tenant stated that the Notice to End Tenancy was placed in the mail slot of her door and that she found it on December 03, 2011.

The Tenant stated that she did not file her Application for Dispute Resolution to dispute the Notice to End Tenancy until December 28, 2011 as she was under "great pressure" to find employment.

The Tenant argued that the Notice to End Tenancy should be set aside because the tenancy agreement she signed has been altered. She stated that the tenancy agreement she signed indicated that the agreement included an addendum that had fifteen additional terms and that the agreement was amended, without her consent, to show that the addendum only had nine additional terms. The Tenant submitted no evidence to show that any of the terms in the addendum negated her obligation to pay rent of \$715.00 when it was due.

The Landlord is seeking compensation, in the amount of \$50.00, in anticipation of a fee she expects to be charged by the City of New Westminster if the Tenant fails to pay hydro fees. The Landlord was advised that this claim for compensation was not being considered, as the Landlord has not yet suffered this loss. The Landlord retains the right to file an Application for Dispute Resolution seeking compensation for this loss in the event that this loss is realized.

### Analysis

Based on the undisputed evidence presented at the hearing, I find that the Tenant entered into a tenancy agreement with the Landlord that requires the Tenant to pay monthly rent of \$715.00 by the first day of each month.

Based on the undisputed evidence presented at the hearing, I find that the Tenant still owes \$365.00 in rent from December of 2011 and that she paid no rent for January of 2012. As she was required to pay rent \$715.00 in rent on December 01, 2011, pursuant to section 26(1) of the *Act*, and she only paid \$350.00, I find that the Tenant must pay \$365.00 in rent that was due on December 01, 2011.

If rent is not paid when it is due, a landlord may end a tenancy, pursuant to section 46 of the *Act*, by serving notice to the Tenant. On the basis of the testimony of the Tenant, I find that the Tenant received the Ten Day Notice to End Tenancy on, or about, December 03, 2011, pursuant to section 46 of the *Act*. I find that the Landlord submitted insufficient evidence to show that the Notice to End Tenancy was served on December 02, 2011. In reaching this conclusion I note that there was no documentary evidence submitted to establish when it was served and the agent for the Landlord who served the Notice to End Tenancy did not attend the hearing to provide direct testimony regarding service.

Section 46(1) of the *Act* stipulates that a Ten Day Notice to End Tenancy is effective ten days after the date that the tenant receives the Notice. As the Tenant acknowledged receiving the Notice on December 03, 2011, I find that the earliest effective date of the Notice was December 13, 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 December 13, 2011.

Section 46 of the *Act* stipulates that a tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the Notice to End Tenancy if the tenant does not either pay the outstanding rent or file an Application for Dispute Resolution to dispute the Notice within five days of receiving the Notice to End Tenancy. In the circumstances before me the evidence shows that the Tenant did not pay the rent that was due and she did not file an application to dispute the Notice to End Tenancy until twenty-five days after she received the Notice. I therefore find, pursuant to section 46(5) of the *Act*, that the Tenant accepted that the tenancy ended on December 13, 2011, which is ten days after she received the Notice. On this basis I find that the Landlord is entitled to an Order of Possession.

Section 66(1) of the *Act* authorizes me to extend the time limit for making an application to set aside a Notice to End Tenancy only in exceptional circumstances. Section 66(3) specifically prohibits me from extending the time limit to apply to set aside a Notice to End Tenancy beyond the effective date of the Notice. As the Ten Day Notice to End Tenancy was effective on December 13, 2011, I am simply unable to extend the time limit to apply to set aside the Notice for any date past December 13, 2011. As the Tenant did not make application to set aside the Notice until December 28, 2011, I dismiss her application for more time to file that application.

As the Tenant did not vacate the rental unit when the tenancy ended on December 13, 2011, I find that she is obligated to pay rent, on a per diem basis, for the days she remained in possession of the rental unit. As she has already been ordered to pay rent for the period between December 14, 2011 and December 31, 2011, I find that the Landlord has been duly compensated for that period. I also find that the Tenant must compensate the Landlord for the five days in January that she remained in possession of the rental unit, at a daily rate of \$23.06, which equates to \$115.30. I am unable to award compensation for any other days in January, as I have no reason to conclude that the Tenant will remain in possession of the rental unit after today.

I find that the Tenant fundamentally breached the tenancy agreement when she did not pay rent when it was due. I find that the Tenant fundamentally breached section 46(5) of the *Act* when she did not vacate the rental unit by the effective date of the Ten Day Notice to End Tenancy. I find that the continued occupancy of the rental unit makes it difficult, if not impossible for the Landlord to find new tenants prior to January 15, 2012, as the Tenant has not yet vacated the rental unit. I therefore find that the Tenant must compensate the Landlord for the loss of revenue it can be reasonably expected to experience between January 06, 2012 and January 15, 2012, which is \$242.20, which is one half of a month's rent, less \$115.30.

I decline to award compensation for the entire month of January, as it is entirely possible that new tenants could be located for January 15, 2012 if the Tenant vacates immediately. The Landlord retains the right to file another Application for Dispute Resolution seeking additional compensation for loss of revenue if the Tenant does not comply with the Order of Possession.

In reaching this decision I have placed no weight on the argument that the tenancy agreement was amended to show that the agreement included an addendum that had nine additional terms instead of an addendum that had fifteen additional terms. As the Tenant submitted no evidence to show that any of the terms in the addendum negated her obligation to pay rent of \$715.00 when it was due and she was unable to state that the terms negated this obligation, I find that the amendment has no bearing on the matter before me.

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.

### Conclusion

I hereby grant the Landlord an Order of Possession that is effective two days after it is served upon the Tenant. This Order may be served on the Tenant, 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 \$772.50, which is comprised of \$722.50 in unpaid rent/loss of revenue and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to retain the Tenant's security deposit of \$357.50, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$415.00. 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: January 05, 2012.

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Residential Tenancy Branch