



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      Landlords:    OPR, OPC, MNR, MNSD and FF  
                         Tenant:        CNR, CNC, MNDC and DRI

This hearing was convened on applications by both the landlords and the tenant.

By application of June 14, 2012, the landlord sought an Order of Possession pursuant to a one-month Notice to End Tenancy for cause – repeated late payment – dated May 25, 2012 and a 10-day Notice to End Tenancy for unpaid rent dated June 6, 2012. The landlords also sought a monetary award for unpaid rent, recovery of their filing fee for this proceeding and authorization to retain the security deposit in set off against any balance found owing.

By prior application of June 7, 2012, the tenant sought to have both notices set aside, to dispute a rent increase and return of rent and utilities overpayments.

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

The landlords' application requires a decision on whether either or both Notices should be set aside or upheld with an Order of Possession and whether they are entitled for a monetary award for unpaid rent, recovery of their filing fee and authorization to retain the security deposit.

The tenant's application similarly requires a decision on whether the Notices to End should be set aside or upheld, whether a rent increase and inclusion of one-half of utilities should be turned back and reimbursed.

### **Background, Evidence and Analysis**

This tenancy began on October 15, 2011 under a previous landlord with rent set at \$900 per month with utilities included and the tenant paid a security deposit of \$450. The rental unit is a basement suite with landlords occupying the main floor.

The property was sold with the new landlord taking possession on or about April 1, 2012.

On March 31, 2012, the new landlords had the tenant sign a new rental agreement which increased the rent to \$1,000 and added the burden of one-half of utilities billings to the tenant.

During the hearing, the landlords gave evidence that the tenant had not paid the rent for April 2012 until early May 2012 and was late with the May rent, leading to the notice for repeated late payment of rent on May 25, 2012. At the time of the hearing, a portion of the rent for June 2012 remained unpaid leading to the 10-day notice for unpaid rent dated June 6, 2012.

When landlords purchase a property with an existing tenancy, they are seized by the right, responsibilities and terms put in place by the previous landlord, including the one-year period between rent increases and terms respecting utilities. Section 5(2) of the *Act* provides that, "Any attempt to avoid or contract out of this Act or the regulations is of no effect."

Accordingly, I find that the rental agreement of March 31, 2012 is of no effect and the utilities and rent amendments therein are not enforceable and are hereby reversed and payments for increased rents and utilities must be credited or returned to the tenant.

With respect to the Notice to End Tenancy for repeated late payment of rent, the evidence shows that the rent for April and May of 2012 had been paid late. Residential Policy Guidelines set a bench mark of three late payments within one year as the standard to justify ending a tenancy for repeated late payment. In the present matter, while the subsequent June rent was paid late, it was not known to be so at the time the Notice to End Tenancy was served. Therefore, the Notice of May 25, 2012 is set aside.

As to the 10-day Notice to End Tenancy of June 6, 2012, the parties concurred that the tenant, except for a \$200 advance payment made in late May 2012 - had not paid the balance of the rent for June 2012 at the time of the hearing. The tenant stated that she had withheld the rent pending a determination of the amount owed at the hearing.

Section 26 of the *Act* provides that tenants must pay rent when it is due, "...whether or not the landlord complies with this Act, the regulations or the tenancy agreement...."

Section 46 of the *Act* provides that a landlord may issue a Notice to End Tenancy for unpaid rent on a day after the rent is due. The tenant may cancel the notice by paying the overdue rent or make application to dispute the notice within five days of receiving it.

In this instance, I find that the tenant has made application to dispute the Notice to End Tenancy but did not pay the rent or any part of it within five days of receiving the Notice to End Tenancy.

Therefore, I find that the landlords are entitled to an Order of Possession to take effect two days from service of it on the tenant.

As to the monetary claims by the parties, I find that – including authorization to retain the security deposit in set off and recovery of the filing fee which I now grant – I find that accounts balance as follows:

<b>Tenants' Credits</b>		
Return rent overpayment for April 2012	100.00	
Return rent overpayment for May 2012	100.00	
Credit advance payment on June rent	200.00	
Return utilities payment	115.00	
Sub total	\$965.00	\$965.00
<b>Award to Landlords</b>		
Rent for June 2012	\$ 900.00	
Filing fee	50.00	
	\$950.00	- 950.00
<b>Balance due to tenants</b>		<b>\$ 15.00</b>

### Conclusion

The landlord's copy of this decision is accompanied by an Order of Possession, enforceable through the Supreme Court of British Columbia to take effect two days from service of it on the tenant.

I hereby direct that the landlords may retain \$435 of the security deposit for rent due for June 2012 and recovery of their filing fee, and must return the remainder \$15.00 to the tenant at the conclusion 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 26, 2012.

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Residential Tenancy Branch