



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR, MNR, ET, FF

### Introduction

On May 4, 2012, the Residential Tenancy Branch considered the landlord's original application for an Order of Possession for unpaid rent pursuant to section 55 of the *Residential Tenancy Act* (the *Act*) and a monetary order for unpaid rent of \$650.00 pursuant to section 67 of the *Act* (RTB File #####). In his May 4, 2012 decision, the Dispute Resolution Officer allowed the landlord's application for an Order of Possession and a monetary Order of \$650.00 on the basis of a direct request proceeding, pursuant to section 55(4) of the *Act*.

On May 14, 2012, the tenant applied for review of the May 4, 2012 decision. In her May 22, 2012 decision, a different Dispute Resolution Officer (DRO) allowed the tenant's application for review and ordered that the May 4, 2012 decision and Order be suspended until such time as a participatory hearing could be conducted and a decision rendered.

The reconvened hearing of the landlord's original application was assigned to me by the Scheduler of the Residential Tenancy Branch (RTB). Subsequent to the landlord's filing of the original application for dispute resolution, the landlord submitted an additional application for:

- an early end to this tenancy and an Order of Possession pursuant to section 56; and
- authorization to recover the filing fee for this second application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The parties agreed that the landlord's process server handed the tenant a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) and a 2 Month Notice to End Tenancy for Landlord Use of Property (the 2 Month Notice) on April 14, 2012. The tenant did not dispute the landlord's claim that a process server sent him a copy of the landlord's dispute resolution hearing package by registered mail on April 25, 2012. He said that he must have received this package including notice of this hearing. Both

parties received notice of the current hearing scheduled for June 13, 2012. I am satisfied that the parties served these documents in accordance with the *Act*.

#### Issues(s) to be Decided

Is the landlord entitled to obtain an early end to this tenancy and an Order of Possession? If not, is the landlord entitled to an Order of Possession for unpaid rent? Is the landlord entitled to a monetary award for unpaid rent? Is the landlord entitled to recover the filing fee for the second application from the tenant?

#### Background and Evidence

This three-month fixed term tenancy for an upper level suite in a two level, two unit rental property commenced on January 13, 2012. The landlord testified that \$650.00 in monthly rent was due throughout this tenancy on the 13<sup>th</sup> of each month; the tenant testified that monthly rent was due on the 1<sup>st</sup> of each month. He said that at the beginning of this tenancy he obtained the landlord's authorization to have all monthly rental payments and his security deposit paid directly by the Ministry of Social Development (the Ministry). Since the fixed term tenancy agreement entered into written evidence by the parties did not specify what was to happen at the end of the fixed term on April 12, 2012, I find that the tenancy continued as a periodic tenancy on April 13, 2012, which became the date when monthly rent became due.

The landlord's initial application for a monetary award of \$650.00 was for unpaid rent for April 2012. Since the landlord applied for dispute resolution, the landlord and her counsel maintained that the tenant has not paid any further rent. The landlord's counsel requested an increase in the monetary award sought in this application from \$650.00 to \$1,300.00 for unpaid rent for April and May 2012, plus partial compensation for unpaid rent for June 2012.

The tenant testified that the Ministry has been looking after all of his monthly rent payments for this tenancy. As part of his application for review, he submitted a copy of a Ministry document showing Cheque Details for the Ministry's attempted payment of a \$650.00 cheque issued on March 21, 2012. This document noted that the cheque was cancelled on April 3, 2012. The tenant maintained that the landlord returned this cheque to the Ministry. The landlord testified that she received and cashed three monthly cheques from the Ministry for this tenancy for \$650.00 for each of the three months of the fixed term tenancy. She said that she also received a \$325.00 cheque from the Ministry to cover the tenant's security deposit. She testified that she has not received any further cheques from the Ministry, nor has she returned any cheques to the Ministry. The tenant said that he believes that there are likely three cheques to the landlord currently in the Ministry's office. However, he conceded that he had not

checked with the Ministry to confirm this evidence, nor did he take any actions following the landlord's issuance of the 10 Day Notice to ensure that his rent payment was made to the landlord within five days of receiving the 10 Day Notice. He maintained that after signing her agreement to let the Ministry pay his monthly rent directly to her, it became the landlord's responsibility to follow up with the Ministry if rental payments were not forthcoming.

The landlord's counsel submitted considerable written evidence in the form of sworn affidavits from the landlord, her husband who co-owns the property with her, her son (who also provided sworn oral testimony at this hearing), and a general contractor hired by the landlords. Although the general contractor was also available to participate in this hearing if needed, the tenant did not dispute that the contractor would provide the same testimony as that entered into written evidence in his sworn affidavit. The tenant said that there was no need for the contractor to provide his oral testimony at this hearing as he accepted that the contractor would repeat what he had set out in his sworn affidavit.

In the written evidence submitted by the landlord's counsel and in sworn testimony of the landlord and her witness (her stepson) who lives in the lower suite in this rental property, the landlord's counsel maintained that the tenant's behaviour and those of the individuals living with him and those visiting the premises has turned violent and threatening. He entered evidence with respect to threats, verbal assaults, and intimidating behaviours demonstrated by those either residing in the tenant's rental unit or those visiting the tenant or his children. He noted that those either residing in the rental unit or visiting that rental unit have brandished knives and a hammer while making threats to the landlords and/or their stepson. The landlord's counsel also provided written evidence regarding police follow-up to an anonymous threat the police received that was directed at the landlords' stepson who resides in the lower rental unit in this rental property. He said that the landlords are also very worried that the tenant may be following through with his threats to cause extraordinary damage to the rental property. The landlord and her son gave sworn testimony that a flood occurred while the landlord's son was absent from his lower suite which they attribute to actions likely taken by those in the upstairs suite, the tenant's rental unit. The landlord's stepson testified that there has been constant yelling and swearing since the landlord issued the notices to end this tenancy. The police have been called a number of times and both parties referred to different accounts of what the police told them. No evidence from police files was presented for this hearing.

The tenant maintained that the landlords' stepson is responsible for initiating the noise problems in this rental property. He said that the landlords' stepson and his friends

have threatened and harassed the tenant's children. He provided a different account of the May 29, 2012 incident that figured prominently in the landlord's oral and written evidence. He questioned the landlord's claim that he or those in his rental unit have threatened the landlords or their stepson. However, he did admit that he yelled at the landlords' stepson while at the top of the stairs while waving a hammer at him to warn him not to climb the stairs and try to enter the tenant's rental unit. He also testified that the threats issued by his children and those in the rental unit were only made in response to threats made by the landlords' stepson against them.

Analysis –Landlord's Application for an Early End to Tenancy and an Order of Possession

Section 56 of the *Act* allows a landlord to make an application to end a tenancy early without service of a Notice to End Tenancy when it would be unreasonable and unfair to both the landlord and the other occupants of the residential property to wait for a notice to end tenancy for cause to take effect.

Based on the evidence before me, I find that since the landlord issued the Notices to End Tenancy there have been ongoing problems with those who either reside at or have been visiting the rental unit. While these incidents may call for the issuance of a 1 Month Notice to End tenancy for Cause, I find that recent incidents involving threats and the brandishing of a knife and a hammer has raised the conduct to a new level that is frightening to the landlords and the other tenant in this two unit rental property, the landlords' stepson. Despite denying the issuance of threats against the landlords or her stepson, the tenant also gave sworn testimony that he did in fact give the landlords' stepson a warning while holding a hammer and testified that the threats issued by his children or others on the premises were in response to threats against them. Based on these statements, the tenant appears to fail to recognize, even during the course of this hearing, that threats made while brandishing weapons must be taken very seriously. I find on a balance of probabilities that it would be unreasonable and unfair to the landlords and the other tenant to wait for a notice to end tenancy for unpaid rent, for landlord's use of the property or for cause to take effect.

Out of safety concerns, I find that this tenancy must end as soon as possible. For that reason, I allow the landlord's application to end this tenancy early and grant the landlord a 24 hour Order of Possession. This Order may be filed in the Supreme Court and enforced as an order of that Court.

Since I have granted the landlord's application for an early end to this tenancy, there is no need to consider the landlord's application to end this tenancy on the basis of the 10 Day Notice. However, even if I were found to be wrong in allowing the landlord to end

this tenancy early, I would also find that the landlord has grounds to end this tenancy for unpaid rent and issue an Order of Possession on that basis.

#### Analysis- Landlord's Application for a Monetary Order

Based on a balance of probabilities, I find that the landlord has demonstrated that monthly rent has not been paid for April, May or June 2012, each of which became due on the 13<sup>th</sup> of each month. I reject the tenant's claim that it was the landlord's responsibility to follow up with the Ministry if monthly rent cheques were not being received by the landlord. The tenancy agreement was entered into between the landlord and the tenant. When the tenant received notice that the landlord had not received rent for April 2012, it became the tenant's responsibility to ensure that any misunderstanding between the Ministry and the landlord were resolved or to ensure that rent payments were made within five days of receiving the 10 Day Notice on April 14, 2012. His claim that a cheque was allegedly issued by the Ministry on March 21, 2012 and cancelled on April 3, 2012 does not set aside the tenant's responsibility to ensure that monthly rent was paid to and received by the landlord. I attach little weight to the tenant's unsubstantiated and unverified suggestion that the Ministry likely has three cheques addressed to the landlord in its offices. If that were in fact correct, the tenant was responsible for ensuring that these cheques were delivered to the landlord. This did not occur. The tenant has provided insufficient evidence to demonstrate that any monthly rent payments have been issued and received for this tenancy other than the three monthly payments referred to by the landlord in her sworn testimony.

As this tenancy ends on the basis of the landlord's successful application for an early end to this tenancy, I find that the landlord is entitled to a monetary award of \$1,300.00 for rent due on April 13, 2012 and May 13, 2012.

I allow the landlord's application for the recovery of the \$50.00 filing fee for the second application for dispute resolution. Although the landlord's application does not seek to retain the tenant's security deposit, using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the security deposit plus applicable interest in partial satisfaction of the monetary award. No interest is payable over this period.

#### Conclusion

Pursuant to section 82(3) of the *Act*, I vary the decision and Order issued on May 4, 2012.

I allow the landlord's application to end this tenancy early. I provide the landlord with a formal copy of an Order of Possession to take effect within 24 hours of the landlord's service of this notice to the tenant(s). Should the tenant(s) fail to comply with this

Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary Order in the landlord's favour under the following terms which allows the landlord to recover unpaid rent and the filing fee for one of the landlord's applications and to retain the tenant's security deposit:

Item	Amount
Rent Owing for April 2012	\$650.00
Rent Owing for May 2012	650.00
Less Security Deposit	-325.00
Recovery of Filing Fee for Application for RTB File # 654321	50.00
<b>Total Monetary Order</b>	<b>\$1,025.00</b>

The landlord is provided with these Orders in the above terms and the tenant must be served with a copy of these Orders as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: June 13, 2012

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Residential Tenancy Branch