



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes:

**OPR, CNR, MNR, MNSD, FF**

### Introduction

This was a cross-application hearing.

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested 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.

The tenant applied requesting more time to dispute a 10 Day Notice to End Tenancy for Unpaid Rent and to cancel the Notice.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

### Preliminary Matters

The landlord has applied requesting an Order of possession, indicating 2 10 Day Notices for Unpaid Rent were issued; 1 on August 6, 2012 and the 2<sup>nd</sup> on August 17, 2012.

On August 17, 2012, the tenant applied to cancel a 10 Day Notice to End Tenancy; a copy of the August 6, 2012, Notice was supplied as evidence. Neither party supplied a copy of the August 17 Notice.

The landlord applied for dispute resolution on August 30, 2012 and supplied an evidence package that was submitted to the Residential Tenancy Branch within the required time-frame. That evidence was served to the tenant via registered mail sent on September 13, 2012; the tenant had not yet received the evidence. I determined, pursuant to section 90 of the Act, that the evidence would be deemed served on the 5<sup>th</sup> day after mailing; September 18, 2012, which resulted in that evidence being set aside,

as it was not given to the tenant at least 5 days prior to the hearing; as required by the Rules of Procedure.

The landlord stated that she is claiming compensation for September, 2012 rent owed on the 16<sup>th</sup> of August, in the sum of \$750.00.

During the hearing I asked that the landlord and tenant to each submit a copy of the August 17, 2012, 10 Day Notice to End Tenancy and that the landlord submit a copy of the tenancy agreement signed on June 16, 2007. These documents were to be submitted no later than 11 a.m. on September 21, 2012, by facsimile. The parties confirmed they could meet this deadline and were informed that I would consider only those documents I had specifically requested and only those received as Ordered.

The tenant confirmed that within the past 2 years her surname changed; the landlord has used the previous surname on the Notice to end tenancy.

At the start of the hearing the tenant's agent identified himself as an advocate for the tenant. Later in the hearing it became obvious that this individual has been in fact acting as an agent for the tenant. He was affirmed at the start of the hearing and provided testimony throughout the hearing; on behalf of the tenant.

#### Issue(s) to be Decided

Is the landlord entitled to an Order of possession for unpaid rent?

Is the landlord entitled to a monetary Order for unpaid rent?

May the landlord retain the deposit paid by the tenant?

Is the landlord entitled to filing fee costs?

#### Background and Evidence

The parties agreed that the tenancy commenced in 2007; the day rent is due was in dispute. The tenant stated rent is due on the first day of each month; the landlord said rent is due on the 16<sup>th</sup> day of each month. Rent is \$750.00 per month; a deposit in the sum of \$375.00 was paid

The tenant confirmed receipt, on August 9, 2012, of a 10 Day Notice to End Tenancy for Unpaid Rent issued on August 6, 2012. The landlord stated the Notice had been posted to the tenant's door on August 6, 2012.

The August 6, 2012, Notice indicated that the Notice would be automatically cancelled if the landlord received \$750.00 rent owed on June 16, 2012, within 5 days. The landlord agreed that the tenant made a payment in the sum of \$750.00 on August 9, 2012. 9<sup>th</sup>.

The tenant confirmed receipt, on August 17, 2012, of a 10 Day Notice to End Tenancy for Unpaid Rent. The landlord said that Notice was issued on August 17, 2012, for rent owed July 16, 2012, in the sum of \$750.00. The effective date of the Notice was August 30, 2012.

A copy of a 10 Day Notice to End Tenancy for Unpaid Rent issued on August 17, 2012, was submitted, as requested, by the landlord. This Notice did not include the landlord's signature. The tenant also supplied a copy of the Notice; her copy was not signed by the landlord.

On August 17, 2012, the tenant disputed the Notice as she had paid rent that was due and considered her next payment due on September 1, 2012.

On August 31, 2012, the tenant paid the landlord \$750.00.

The tenant's agent at the hearing testified that he has been acting for the tenant and making rent payments on her behalf since December, 2011. The agent deposits cash at the bank, for transfer to the landlord. The tenant faces health issues that necessitate assistance.

The landlord confirmed that she did not respond to an email sent to her by the tenant's agent on August 21, 2012, as she did not accept him as the agent of the tenant.

The tenant's agent said he was attempting to clarify rent that was owed and the due date of rent owed, in response to the Notice issued on August 17, 2012. As rent payments had been made, since December, on either the last day of a month, or the first day, the agent and tenant were confused as to when rent was actually due. The Notice indicated rent was due on the 16<sup>th</sup> of each month.

The landlord said that on July 31, 2012, she spoke with the tenant, but that the tenant yelled at her. The tenant denied that this occurred and pointed to the August 21 email as evidence that there was confusion in relation to the rent due date.

The landlord reviewed the dates rent payments had been made since February, 2012; the payments were submitted on either the last day or the first day of each month. No submissions were made in relation to the dates rent had been paid prior to December, 2011.

During the hearing the tenant's agent offered to immediately make a \$750.00 payment for rent and said that they could accept rent is due on the 16<sup>th</sup> of each month, rather than the 1<sup>st</sup> day. The agent submitted that the confusion had been created by the landlord accepting rent since December, 2011 and not mentioning she expected payment on the 16<sup>th</sup> of each month.

The landlord said that the tenant has lived in the unit since 2007 and signed an agreement to pay rent on the 16<sup>th</sup> day of each month. The tenant stated she did not receive a copy of the signed agreement; the landlord submitted that her sister, who acts as agent, had given the tenant a copy of the agreement.

A copy of a hand-written document signed on June 16, 2007, by only the tenant, was submitted as evidence, as requested. This document indicated rent was \$750.00 per month and that a deposit had been paid. Rent was due on the 16<sup>th</sup> day of each month; the date had been altered and an initial appeared by the date.

### Analysis

It was obvious during the hearing that the relationship between the tenant and landlord has deteriorated. The parties have disagreed as to the date rent is due and the tenant's agent has been thwarted in his attempts to communicate with the landlord.

The tenant has a right, particularly given her health issues, to appoint an agent to assist and act on her behalf. It would be reasonable of the landlord to respond to emails from the agent, particularly when a failure to do so related to such an important matter of the rent due date is being questioned. A response by the landlord, to that enquiry, could have avoided this hearing. The parties have a history of communicating by email.

In relation to the agreement signed on June 16, 2007; the date rent is due has been altered to the 16<sup>th</sup> and one initial was placed by that date. I could not discern who initialed that change.

Section 6(3) of the Act provides:

- 3) A term of a tenancy agreement is not enforceable if*  
*(a) the term is inconsistent with this Act or the regulations,*  
*(b) the term is unconscionable, or*  
*(c) the term is not expressed in a manner that clearly communicates the rights and obligations under it.*

I find the term is not expressed in a manner that clearly communicated the rent due date. The agreement signed by the tenant on June 16, 2007 failed to include a signature by both parties and, the rent due date was altered. I am unable to determine who initialed the altered rent due date.

The landlord did not produce a witness who could testify as to when and how the tenant was given a copy of the tenancy agreement; which caused me, on the balance of probabilities, to accept that the tenant does not possess a copy of that document.

I find that the 10 Day Notice to End Tenancy issued on August 6, 2012, is of no force and effect as the tenant paid the amount of rent indicated on the Notice on the same date she received the Notice, therefore; she was not required to dispute the Notice. Rent was paid within 5 days.

The 2<sup>nd</sup> 10 Day Notice to End Tenancy for Unpaid Rent was disputed, as the tenant believed that her rent was actually due on the 1<sup>st</sup> day of each month. The landlord vehemently opposed the tenant's submission.

The copy of the 10 Day Notice to End Tenancy issued on August 17, 2012, and submitted by the landlord on my request, was not signed by the landlord or her agent. The tenant also supplied a copy of the Notice, as requested; her copy was not signed by the landlord or the landlord's agent. Section 52 of the Act provides:

***Form and content of a notice to end tenancy***

***52 In order to be effective, a notice to end a tenancy must be in writing and must***

- (a) be signed and dated by the landlord or tenant giving the notice,*
- (b) give the address of the rental unit,*
- (c) state the effective date of the notice,*
- (d) except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy, and*
- (e) when given by a landlord, be in the approved form.*

(Emphasis added)

Therefore, as the Notice does not meet the requirements of section 52 of the Act, I find that it is of no force and effect. The tenancy will continue until it is ended as provided by the Act.

Pursuant to section 62(3) I Order that rent payments, commencing immediately, are due on the 16<sup>th</sup> day of each month. The tenant must pay September - October rent owed forthwith; or the landlord will be at liberty to issue a 10 Day Notice to End Tenancy. As that rent was due at the time of the hearing I have issued the landlord a monetary order in the sum of \$750.00 for rent due September, 16, 2012. If payment has been made the Order will not be enforceable.

I find that rent owed August 16, 2012, was paid on August 31, 2012.

Pursuant to section 62(3) of the Act, I find that the term related to rent owed, up to September 16, 2012, was not adequately expressed and that rent payments made prior to October 16, 2012 may not be considered as late.

As the tenancy agreement signed by the parties does not include all of the standard terms that every tenancy in British Columbia must include, I have appended a copy of the standard terms at the bottom of this decision; those terms must be applied to this tenancy.

I have enclosed a copy of the *Guide for Landlords and Tenants in British Columbia* for each party.

I have declined filing fee costs as this matter could have been solved if clarity regarding the rent due date had been clearly stated and provided to the tenant's agent.

### Conclusion

The August 6 and August 17, 2012, 10 Day Notices to End Tenancy for Unpaid Rent are of no force or effect. The tenancy will continue until it is ended as provided by the Act.

Rent is due on the 16<sup>th</sup> day of each month.

The landlord is to provide the tenant with a copy of the agreement signed on June 16, 2007.

The parties are bound by the Schedule of Terms, appended at the bottom of this decision.

Based on these determinations I grant the landlord a monetary Order in the sum of \$750.00 for rent owed September 16, 2012. 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 final and binding on the parties, unless otherwise provided under the Act, and 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: September 20, 2012.

---

Residential Tenancy Branch

### ***Schedule***

*[am. B.C. Reg. 234/2006, s. 22.]*

***Application of the Residential Tenancy Act***

- 1** (1) *The terms of this tenancy agreement and any changes or additions to the terms may not contradict or change any right or obligation under the Residential Tenancy Act or a regulation made under that Act, or any standard term. If a term of this tenancy agreement does contradict or change such a right, obligation or standard term, the term of the tenancy agreement is void.*
- (2) *Any change or addition to this tenancy agreement must be agreed to in writing and initialed by both the landlord and the tenant. If a change is not agreed to in writing, is not initialed by both the landlord and the tenant or is unconscionable, it is not enforceable.*
- (3) *The requirement for agreement under subsection (2) does not apply to the following:*
- (a) a rent increase given in accordance with the Residential Tenancy Act;*
  - (b) a withdrawal of, or a restriction on, a service or facility in accordance with the Residential Tenancy Act;*
  - (c) a term in respect of which a landlord or tenant has obtained an order of the director that the agreement of the other is not required.*

**Security deposit and pet damage deposit**

- 2** (1) *The landlord agrees*
- (a) that the security deposit and pet damage deposit must each not exceed one half of the monthly rent payable for the residential property,*
  - (b) to keep the security deposit and pet damage deposit during the tenancy and pay interest on it in accordance with the regulation, and*
  - (c) to repay the security deposit and pet damage deposit and interest to the tenant within 15 days of the end of the tenancy agreement, unless*
    - (i) the tenant agrees in writing to allow the landlord to keep an amount as payment for unpaid rent or damage, or*
    - (ii) the landlord makes an application for dispute resolution under the Residential Tenancy Act within 15 days of the end of the tenancy agreement to claim some or all of the security deposit or pet damage deposit.*
- (2) *The 15 day period starts on the later of*
- (a) the date the tenancy ends, or*
  - (b) the date the landlord receives the tenant's forwarding address in writing.*
- (3) *If a landlord does not comply with subsection (1), the landlord*
- (a) may not make a claim against the security deposit or pet damage deposit, and*
  - (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both.*
- (4) *The tenant may agree to use the security deposit and interest as rent only if the landlord gives written consent.*

**Pets**

- 3** *Any term in this tenancy agreement that prohibits, or restricts the size of, a pet or that governs the tenant's obligations regarding the keeping of a pet on the residential property is subject to the rights and restrictions under the Guide Animal Act.*

### **Condition inspections**

- 4** (1) *In accordance with sections 23 and 35 of the Act [condition inspections] and Part 3 of the regulation [condition inspections], the landlord and tenant must inspect the condition of the rental unit together*
- (a) when the tenant is entitled to possession,*
  - (b) when the tenant starts keeping a pet during the tenancy, if a condition inspection was not completed at the start of the tenancy,*
  - and*
  - (c) at the end of the tenancy.*
- (2) The landlord and tenant may agree on a different day for the condition inspection.*
- (3) The right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord does not perform the landlord's obligations under sections 23 and 35 of the Residential Tenancy Act.*
- (4) A right of the tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if the tenant fails to perform the tenant's obligations under section 23 and 35 of the Residential Tenancy Act.*

### **Payment of rent**

- 5** (1) *The tenant must pay the rent on time, unless the tenant is permitted under the Act to deduct from the rent. If the rent is unpaid, the landlord may issue a notice to end a tenancy to the tenant, which may take effect not earlier than 10 days after the date the tenant receives the notice.*
- (2) The landlord must not take away or make the tenant pay extra for a service or facility that is already included in the rent, unless a reduction is made under section 27 (2) of the Act.*
- (3) The landlord must give the tenant a receipt for rent paid in cash.*
- (4) The landlord must return to the tenant on or before the last day of the tenancy any post-dated cheques for rent that remain in the possession of the landlord. If the landlord does not have a forwarding address for the tenant and the tenant has vacated the premises without notice to the landlord, the landlord must forward any post-dated cheques for rent to the tenant when the tenant provides a forwarding address in writing.*

### **Rent increase**

- 6** (1) *Once a year the landlord may increase the rent for the existing tenant. The landlord may only increase the rent 12 months after the date that the existing rent was established with the tenant or 12 months after the date of the last legal rent increase for the tenant, even if there is a new landlord or a new tenant by way of an assignment. The landlord must use the approved Notice of Rent Increase form available from any Residential Tenancy office or Government Agent.*
- (2) A landlord must give a tenant 3 whole months notice, in writing, of a rent increase.*
- [For example, if the rent is due on the 1st of the month and the tenant is given notice any time in January, including January 1st, there must be 3 whole months before the increase begins. In this example, the months are February, March and April, so the increase would begin on May 1st.]*
- (3) The landlord may increase the rent only in the amount set out by the regulation. If the tenant thinks the rent increase is more than is allowed by the regulation, the tenant may talk to the landlord or contact the Residential Tenancy office for assistance.*



*(4) Either the landlord or the tenant may obtain the percentage amount prescribed for a rent increase from the Residential Tenancy office.*

**Assign or sublet**

- 7** (1) *The tenant may assign or sublet the rental unit to another person with the written consent of the landlord. If this tenancy agreement is for a fixed length of 6 months or more, the landlord must not unreasonably withhold consent. Under an assignment a new tenant must assume all of the rights and obligations under the existing tenancy agreement, at the same rent. The landlord must not charge a fee or receive a benefit, directly or indirectly, for giving this consent.*
- (2) If a landlord unreasonably withholds consent to assign or sublet or charges a fee, the tenant may make an application for dispute resolution under the Residential Tenancy Act.*

**Repairs**

- 8** (1) *Landlord's obligations:*
- (a) The landlord must provide and maintain the residential property in a reasonable state of decoration and repair, suitable for occupation by a tenant. The landlord must comply with health, safety and housing standards required by law.*
  - (b) If the landlord is required to make a repair to comply with the above obligations, the tenant may discuss it with the landlord. If the landlord refuses to make the repair, the tenant may make an application for dispute resolution under the Residential Tenancy Act seeking an order of the director for the completion and costs of the repair*
- (2) Tenant's obligations:*
- (a) The tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. The tenant must take the necessary steps to repair damage to the residential property caused by the actions or neglect of the tenant or a person permitted on the residential property by that tenant. The tenant is not responsible for repairs for reasonable wear and tear to the residential property.*
  - (b) If the tenant does not comply with the above obligations within a reasonable time, the landlord may discuss the matter with the tenant and may make an application for dispute resolution under the Residential Tenancy Act seeking an order of the director for the cost of repairs, serve a notice to end a tenancy, or both.*
- (3) Emergency repairs:*
- (a) The landlord must post and maintain in a conspicuous place on the residential property, or give to the tenant in writing, the name and telephone number of the designated contact person for emergency repairs.*
  - (b) If emergency repairs are required, the tenant must make at least two attempts to telephone the designated contact person, and then give the landlord reasonable time to complete the repairs.*
  - (c) If the emergency repairs are still required, the tenant may undertake the repairs, and claim reimbursement from the landlord, provided a statement of account and receipts are given to the landlord. If the landlord does not reimburse the tenant as required,*

*the tenant may deduct the cost from rent. The landlord may take over completion of the emergency repairs at any time.*

*(d) Emergency repairs must be urgent and necessary for the health and safety of persons or preservation or use of the residential property and are limited to repairing*

- (i) major leaks in pipes or the roof,*
- (ii) damaged or blocked water or sewer pipes or plumbing fixtures,*
- (iii) the primary heating system,*
- (iv) damaged or defective locks that give access to a rental unit, or*
- (v) the electrical systems.*

### **Occupants and guests**

**9** *(1) The landlord must not stop the tenant from having guests under reasonable circumstances in the rental unit.*

*(2) The landlord must not impose restrictions on guests and must not require or accept any extra charge for daytime visits or overnight accommodation of guests.*

*(3) If the number of occupants in the rental unit is unreasonable, the landlord may discuss the issue with the tenant and may serve a notice to end a tenancy. Disputes regarding the notice may be resolved by applying for dispute resolution under the Residential Tenancy Act.*

### **Locks**

**10** *(1) The landlord must not change locks or other means of access to residential property unless the landlord provides each tenant with new keys or other means of access to the residential property.*

*(2) The landlord must not change locks or other means of access to a rental unit unless the tenant agrees and is given new keys.*

*(3) The tenant must not change locks or other means of access to*

- (a) common areas of residential property, unless the landlord consents to the change, or*
- (b) his or her rental unit, unless the landlord agrees in writing to, or the director has ordered, the change.*

### **Landlord's entry into rental unit**

**11** *(1) For the duration of this tenancy agreement, the rental unit is the tenant's home and the tenant is entitled to quiet enjoyment, reasonable privacy, freedom from unreasonable disturbance, and exclusive use of the rental unit.*

*(2) The landlord may enter the rental unit only if one of the following applies:*

*(a) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant a written notice which states*

*(i) the purpose for entering, which must be reasonable, and*

*(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant agrees otherwise;*

*(b) there is an emergency and the entry is necessary to protect life or property;*

*(c) the tenant gives the landlord permission to enter at the time of entry or not more than 30 days before the entry;*

*(d) the tenant has abandoned the rental unit;*

*(e) the landlord has an order of the director or of a court saying the landlord may enter the rental unit;*

*(f) the landlord is providing housekeeping or related services and the entry is for that purpose and at a reasonable time.*

*(3) The landlord may inspect the rental unit monthly in accordance with subsection (2) (a).*

*(4) If a landlord enters or is likely to enter the rental unit illegally, the tenant may make an application for dispute resolution under the Residential Tenancy Act seeking an order of the director to change the locks, keys or other means of access to the rental unit and prohibit the landlord from obtaining entry into the rental unit. At the end of the tenancy, the tenant must give the key to the rental unit to the landlord.*

### **Ending the tenancy**

**12** *(1) The tenant may end a monthly, weekly or other periodic tenancy by giving the landlord at least one month's written notice. A notice given the day before the rent is due in a given month ends the tenancy at the end of the following month. [For example, if the tenant wants to move at the end of May, the tenant must make sure the landlord receives written notice on or before April 30th.]*

*(2) This notice must be in writing and must*

*(a) include the address of the rental unit,*

*(b) include the date the tenancy is to end,*

*(c) be signed and dated by the tenant, and*

*(d) include the specific grounds for ending the tenancy, if the tenant is ending a tenancy because the landlord has breached a material term of the tenancy.*

*(3) If this is a fixed term tenancy and the agreement does not require the tenant to vacate at the end of the tenancy, the agreement is renewed as a monthly tenancy on the same terms until the tenant gives notice to end a tenancy as required under the Residential Tenancy Act.*

*(4) The landlord may end the tenancy only for the reasons and only in the manner set out in the Residential Tenancy Act and the landlord must use the approved notice to end a tenancy form available from the Residential Tenancy office.*

*(5) The landlord and tenant may mutually agree in writing to end this tenancy agreement at any time.*

*(6) The tenant must vacate the residential property by 1 p.m. on the day the tenancy ends, unless the landlord and tenant otherwise agree.*

### **Landlord to give tenancy agreement to tenant**

**13** *The landlord must give the tenant a copy of this agreement promptly, and in any event within 21 days of entering into the agreement.*

### **Dispute resolution**

**14** *Either the tenant or the landlord has the right to make an application for dispute resolution, as provided under the Residential Tenancy Act.*

**Note:** *this regulation repeals B.C. Regs. 161/2000, 264/98, 370/99, 125/2001 and 49/96.*

*[Provisions of the Residential Tenancy Act, S.B.C. 2002, c. 78, relevant to the enactment of this regulation: sections 97, 104 and 115]*