



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes:

OPR, MNR, MNSD, FF

### Introduction

This hearing was convened in response to the Landlord's 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. It is apparent from information on the Application for Dispute Resolution that the Landlord is seeking compensation for lost revenue for November if the rental unit is not vacated in October.

The Agent for the Landlord stated that copies of the Application for Dispute Resolution, the Notice of Hearing, and documents the Landlord wishes to reply upon as evidence were sent to the rental unit, via registered mail, on October 17, 2012. The Landlord submitted Canada Post documentation that corroborates this statement. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*, however the Tenant did not appear at the hearing.

A male appeared at the hearing, who declared that he has been the Tenant's boyfriend for approximately nine years. He stated that the Tenant is currently at a job interview; that the job interview is a "working interview" that is expected to last several hours; that the Tenant did not learn of the interview until yesterday; and that the Tenant would like the matter adjourned.

The Agent for the Landlord opposed the application for an adjournment, as the Tenant owes a significant amount of rent and the Landlord wishes to regain possession of the rental unit.

The application for an adjournment was denied.

A dispute hearing resolution is a serious, legal proceeding and I find that the Tenant had a responsibility to be represented at the hearing. When a party opts to attend a job interview instead of participating in the hearing, I find that the party has an obligation to be represented at the hearing by a third party. In my view, the Tenant should have presented her response to the Landlord's claims through the male who attended the hearing to request an adjournment on her behalf.

My decision to deny the application for an adjournment was heavily influenced by the undisputed evidence that the Tenant owes a significant amount of rent and she has been served with a Notice to End Tenancy. I find these are serious matters and it would be unfair to delay the proceedings simply because the Tenant opted to participate in a job interview.

### Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to an Order of Possession for unpaid rent; to a monetary Order for unpaid rent/lost revenue; to keep all or part of the security deposit; and 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 Agent for the Landlord stated that this tenancy began on March 01, 2009; that the Tenant paid a security deposit of \$450.00; that the rent is related to the Tenant's income; that in September of 2012 the Tenant was required to pay subsidized rent of \$547.00; that the Tenant paid \$200.00 in rent for September; that the Tenant was not entitled to a subsidy for October or November of 2012; that market rent is \$850.00; that the Tenant has not paid rent for October or November of 2012; and that rent was due by the first day of each month. The Tenant presented no evidence to dispute this testimony.

The Landlord submitted a signed Proof of Service, in which an agent for the Landlord declared that she posted a Ten Day Notice to End Tenancy for Unpaid Rent on the door of the rental unit on October 02, 2012. This Notice, which was submitted in evidence, declared that the Tenant must vacate the rental unit by October 12, 2012. The Tenant presented no evidence to dispute this testimony.

### Analysis

Based on the undisputed evidence presented at the hearing, I find that the Tenant entered into a tenancy agreement that required her to pay subsidized rent of \$547.00 on September 01, 2012; that she only paid \$200.00 in rent for September of 2012; that she did not qualify for subsidized rent after September of 2012; that she was required to pay market rent of \$850.00 by the October 01, 2012; and that no rent was paid for October of 2012. As she is required to pay rent pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$1,197.00 in outstanding rent to the Landlord.

If rent is not paid when it is due, a tenancy may be ended pursuant to section 46 of the *Act*. Based on the undisputed evidence presented at the hearing, I find that a Ten Day Notice to End Tenancy, which directed the Tenant to vacate the rental unit by October 12, 2012, was posted at the rental unit on October 02, 2012.

Section 90 of the *Act* stipulates that a document that is posted on a door is deemed to be received on the third day after it is posted. I therefore find that the Tenant received the Notice to End Tenancy on October 05, 2012.

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 is deemed to have received this Notice on October 05, 2012, I find that the earliest effective date of the Notice is October 15, 2012.

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 October 15, 2012.

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 I have no evidence that the Tenant exercised either of these rights and, pursuant to section 46(5) of the *Act*, I find that the Tenant accepted that the tenancy has ended. On this basis I find that the Landlord is entitled to an Order of Possession.

As the Tenant did not vacate the rental unit by October 15, 2012, 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 October 15, 2012 and October 31, 2012, I find that the Landlord has been fully compensated for that period. I also find that the Tenant must compensate the Landlord for the seven days in November that she remained in possession of the rental unit, at a daily rate of \$28.33, which equates to \$198.31.

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 her continued occupancy of the rental unit made it difficult, if not impossible, for the Landlord to find new tenants for November of 2012. I therefore find that the Tenant must compensate the Landlord for the loss of revenue the Landlord is expected to experience for the remainder of November of 2012, which is \$651.69.

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 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 \$2,097.00, which is comprised of \$2,047.00 in unpaid rent/lost revenue and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. I authorize the Landlord to retain the Tenant's security deposit of \$400.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$1,697.00. 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: November 07, 2012.

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Residential Tenancy Branch