



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

Landlords: OPE, OPR, MNSD, MNR, FF

Tenant: MT, CNE, CNL, CNR, OPT, AAT

### **Introduction**

This hearing dealt with cross Applications for Dispute Resolution. The landlords sought an order of possession and a monetary order. The tenant sought more time to apply to cancel a notice to end tenancy; to cancel 3 notices to end tenancy; an order of possession; and an order allowing the tenant access to the rental unit.

The hearing was conducted via teleconference and was attended by the landlords and their witness/agent.

As this hearing dealt with Applications from both parties relating to possession of the rental unit I find that both parties were sufficiently aware of the hearing and the call in procedures. The landlord confirmed at the outset of the hearing that the tenant, as of last night, had not vacated the rental property.

### **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 as a result of the ending of an employment arrangement; to a monetary order for unpaid rent and utilities; for 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, 46, 48, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also decided if the tenant is entitled to more time to apply to cancel a notice to end tenancy; to cancel a 10 Day Notice to End Tenancy for Unpaid Rent; to cancel a 1 Month Notice to End Tenancy for End of Employment; to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property; to an order of possession and an order to allow the tenant access to the rental unit, pursuant to Sections 30, 46, 48, 49, and 54 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The parties provided copies of a tenancy agreement signed by both parties on October 23, 2012 for a 4 and 8 day month fixed term tenancy beginning on October 23, 2012 for a monthly rent of \$750.00 due on the 1<sup>st</sup> of each month with a security deposit of \$200.00 paid. The agreement includes an addendum stipulating the tenancy was conditional on an Employment Contract.

The landlords provided a copy of Employment Contract outlining the duties required and a notation that rent would be reduced to \$400.00 in consideration of these duties with an opportunity for payment/bartering of additional reductions to rent based on specific duties or jobs completed.

The landlord provided confirmation that the tenant was advised that her employment was no longer in effect and agreed to allow her to remain paying the full rental amount of \$750.00.

The landlord provided copies of the following documents into evidence:

- A copy of a 1 Month Notice to End Tenancy for End of Employment issued on November 22, 2012 with an effective vacancy date of December 31, 2012;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on November 9, 2012 with an effective vacancy date of November 29, 2012 citing the tenant had failed to pay rent in the amount of \$110.00 due on November 1, 2012; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on December 2, 2012 with an effective vacancy date of December 12, 2012 citing the tenant had failed to pay rent in the amount of \$832.00 due on December 1, 2012 and utilities in the amount of \$300.94 due December 2, 2012.

The landlord provided a breakdown of outstanding charges as follows:

Rent – October 2012 - \$30.00; November 2012 - \$52.00; December 2012 - \$750.00; the landlord also testified that they tenant had not paid any rent as of January 2, 2013 for these outstanding charges or for the month of January 2013.

Utilities – Hydro - \$326.79; Wood (heating) - \$50.00; Shaw cable and move orders - \$116.39; the tenancy agreement clearly shows that these items are not included in the

rental amount. The correspondence provided by the landlord has outlined demands of payment for these items to the tenant.

Registered Letters - \$21.36; service of documents.

### Analysis

As the tenant failed to attend this hearing I dismiss her Application in its entirety without leave to reapply. Further, as the tenant had applied to cancel the 1 Month Notice and the 10 Day Notice issued on November 9, 2012 in her Application that was submitted on November 21, 2012, I find the tenant has not disputed the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issues on December 2, 2012.

Section 46 of the *Act* allows a landlord to end a tenancy if rent is unpaid on any day after the day it is due by giving the tenant notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

Section 46(4) goes on to say that within 5 days of receiving such a notice the tenant may pay the overdue rent, in which case the notice has no effect or dispute the notice by making an application for dispute resolution. Despite submitting an Application for Dispute Resolution I find the tenant's action of failing to attend this hearing has the same effect as failing to file an Application to dispute the notice.

And Section 46(5) states that if a tenant who receives a notice under Section 46 does not pay the rent or file an application for dispute resolution within 5 days the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date.

For the reasons noted above, I find the tenant is conclusively presumed to have accepted the end of the tenancy and should have vacated the rental unit by any one of the effective dates of all three notices.

In relation to the monetary claim, in part because of the undisputed testimony and evidence provided by the landlord, I find the landlord has established the tenant owes the rent as outlined, including rent for January 2013, as well as all the utilities claimed.

However, I dismiss the portion of the landlord's claim for registered mail as these are a cost of doing business as a landlord.

Conclusion

I find the landlord is entitled to an order of possession effective **two days after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$2,125.18** comprised of \$1,582.00 rent owed; \$493.18 utilities and the \$50.00 fee paid by the landlords for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$200.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$1,925.18**.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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 02, 2013.

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Residential Tenancy Branch

