



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      For the tenant: CNR, RP  
For the landlord: MNR, OPR, FF

### Introduction

This hearing dealt with cross applications of the parties for dispute resolution seeking remedy under the Residential Tenancy Act (the “Act”).

The tenants applied for an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) and an order requiring the landlord to make repairs.

The landlord applied for a monetary order for unpaid rent, for an order of possession for the rental unit due to unpaid rent, and to recover the filing fee for the application.

The tenant did not appear at the beginning of the hearing and the landlord’s agent was unable to provide testimony as to when and how the tenants were served with the Notice of Hearing and the landlord’s application for dispute resolution. The landlord’s agent explained that he was the landlord’s son. Hereafter the landlord’s agent is referred to as landlord.

When the tenant appeared, she confirmed that she received the landlord’s Notice of Hearing and application for dispute resolution via registered mail, when tenant RT handed it to her. The tenant said that the hearing packages for all three tenants were included in the same envelope.

Neither party raised any issues regarding service of the evidence.

I have reviewed the substantial amount of written evidence and testimony before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

*Preliminary issue-* Section 89 of the Act requires that each tenant be served separately with the applicant's Notice of Hearing and application for dispute resolution. In this case, although the landlord included the three hearing packages in the same envelope and not in separate envelopes as required, as there was confirmation from tenant KD that she and tenant RT were served the hearing documents via registered mail, I accept that tenants KD and RT were served in a manner complying with the Act. I have excluded tenant LO from consideration as the landlord was unable to provide evidence that tenant LO was served with the Notice of Hearing and application for dispute resolution in a manner required under section 89.

*Preliminary issue #2-* I have determined that the portion of the tenants' application dealing with a request for an order requiring the landlord to make repairs is unrelated to the primary issue of disputing the Notice. As a result, pursuant to section 2.3 of the Residential Tenancy Branch Rules of Procedure, I have severed the tenants' Application and dismissed that portion of the tenants' request for that order, with leave to reapply.

#### Issue(s) to be Decided

Is the landlord entitled to an order of possession for the rental unit due to unpaid rent, a monetary order, and to recover the filing fee?

Are the tenants entitled to an order cancelling the Notice?

#### Background and Evidence

Although neither party submitted a copy of the tenancy agreement, both parties agreed that there was one. The parties agreed that the tenancy began in April 2012.

The tenant said that her monthly rent of \$1250 included all utilities; the landlord agreed.

Pursuant to the Residential Tenancy Branch Rules of Procedure, the landlord proceeded first in the hearing to explain or support the Notice to End Tenancy.

The landlord stated that the tenants were served a 10 Day Notice to End Tenancy for Unpaid Rent. The attending landlord said that his father, the actual landlord, was out of the country and that his sister dealt with the issuance of the Notice and filing the landlord's application. Therefore the landlord was unable to provide the actual date the tenants were served with the Notice.

I note that the landlord's application stated that the tenants were served the "in person" on March 23, 2013.

The tenant acknowledged receiving the Notice on March 23, 2013, and filed their application for dispute resolution in dispute of the Notice on March 26, 2013.

The effective move out date listed on the Notice was March 30, 2013.

The Notice listed unpaid rent of \$1250 as of March 1, 2013, and unpaid utilities of \$1250 as of March 1, 2013.

The landlord submitted that the tenant has not made a rent payment since issuance of the Notice; however, the landlord could not provide a detailed accounting of payments or unpaid utilities was listed on the Notice.

In response, the tenant claimed that she had some sort of agreement with the landlord that monthly rent was to be reduced to \$1150, but provided no physical proof that such was the case. The tenant submitted that she did pay rent of \$450 for March, but withheld the rest as the repairs that the landlord was aware of have not been made, having lived with various issues for a year.

The tenant agreed that rent for April had not been paid.

### Analysis

#### **Landlord's Application:**

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so. A legal right may include the landlord's consent for deduction; authorization from an Arbitrator or expenditures incurred to make an "emergency repair," as defined in section 33 of the Act. As the tenants have not submitted evidence that any emergency repairs necessary were undertaken, they have not met this criterion.

Where a tenant fails to pay rent when due, the landlord may serve the tenant with a 10 Day Notice for Unpaid Rent. Upon receipt of the 10 Day Notice, the tenant must pay the outstanding rent or dispute the Notice within five days. In this case, I find that the tenants disputed the Notice within five days. When a Notice is disputed, the tenants must be able to demonstrate that they did not owe the landlord rent or had some other legal right to withhold rent.

In the case before me, although the landlord was unable to provide specific accounting records, after hearing the tenant's confirmation that \$450 was paid at some point in March, I am satisfied that the tenants owed the landlord rent when the Notice was issued and that they did not pay all or any of the rent owed to the landlord within five days of receiving the Notice.

Therefore, I find the tenancy has ended for the tenants' failure to pay rent and the landlord is entitled to regain possession of the rental unit.

I find that the landlord is entitled to and I therefore grant an order of possession for the rental unit effective 2 days after service upon the tenants.

I find the landlord failed to submit conclusive proof that the full amount of rent, \$1250, was not paid in March. I therefore accept the tenant's testimony that she paid \$450 towards rent in March and that a balance of \$800 is owed for March 2013.

Also due to the tenant's confirmation that they did not pay rent in April, I find the tenants owe rent to the landlord for April in the amount of \$1250.

I find that the landlord is entitled to a monetary award of \$2100, comprised of unpaid rent of \$800 for March 2013, \$1250 for April 2013, and recovery of the filing fee of \$50.00, which I have granted due to the landlord's successful application.

### **Tenants' application:**

Due to the above, the tenants' application for dispute resolution seeking a cancellation of the Notice is dismissed without leave to reapply as I find the Notice to End Tenancy issued is valid and enforceable.

### **Conclusion**

I grant the landlord a final, legally binding order of possession for the rental unit, which is enclosed with the landlord's Decision. Should the tenants fail to vacate the rental unit pursuant to the terms of the order after it has been served upon them, this order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court. The tenants are advised that costs of such enforcement are recoverable from the tenants.

I grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the amount of \$2100, which I have enclosed with the landlord's Decision.

Should the tenants fail to pay the landlord this amount without delay after the order has been served upon them, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an order of that Court. The tenants are advised that costs of such enforcement are recoverable from the tenants.

As I dealt with only the issue of unpaid rent for March and April 2013, the landlord is granted leave to reapply for any other amounts of alleged rent owed.

The tenant's application is dismissed, without leave to reapply.

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: April 24, 2013

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Residential Tenancy Branch