



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

For the tenant: CNR, FF

For the landlord: MNSD, MNDC, 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 tenant applied for an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) and for recovery of the filing fee.

The landlord applied for a monetary order for money owed or compensation for damage or loss and for unpaid rent, for an order of possession for the rental unit due to unpaid rent, for authority to retain the tenant’s security deposit, and to recover the filing fee for the application.

The parties appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

At the outset of the hearing, neither party raised any issue regarding the service of the other’s evidence or their application.

Thereafter the parties were provided the opportunity to present their evidence orally, refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed the oral and written evidence 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.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the Notice and to recover the filing fee?

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?

Background and Evidence

Although neither party submitted a copy of the tenancy agreement, both parties agreed that the tenancy began on September 1, 2012, monthly rent for basic living space was \$1100, parking was a separate charge, and the tenant paid a security deposit of \$550 at the beginning of the tenancy.

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 tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent on April 24, 2013, by posting it on the tenant's door, listing unpaid rent of \$1100 due March 1, 2013, with an effective move out date of May 4, 2013.

The tenant filed his application for dispute resolution in dispute of the Notice within the allowed 5 days of receipt of the Notice.

The landlord submitted that the tenant did not pay the rent for March, as stated on the Notice, did pay rent for April, and did not pay rent for May. The landlord is claiming compensation in the amount of \$2200 for unpaid rent.

In response, the tenant agreed that rent for March and May were not paid; however, the tenant submitted that as he had spoken with the landlord's spouse about compensation for treating a bedbug issue, he withheld rent due to expenses he incurred in dealing with the bedbugs.

The tenant stated he had a moving truck coming to move him out of the rental unit on June 1.

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.

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 file an application for dispute resolution to dispute the Notice within five days. In this case, I find that the tenant disputed the Notice within five days.

When a Notice is disputed, the tenant must be able to demonstrate that he did not owe rent to the landlord or had some other legal right to withhold rent. A legal right may include the landlord's consent for deduction or authorization from an Arbitrator or expenditures incurred to make an "emergency repair," as defined in section 33 of the Act. As the tenant has not submitted evidence that any emergency repairs necessary were undertaken, he has not met this criterion.

Therefore, I find the tenancy has ended for the tenant's failure to pay rent as required under the Act and the landlord is entitled to regain possession of the rental unit.

As such, I find that the landlord is entitled to an order of possession for the rental unit effective June 1, 2013, at the landlord's agreement to allow the tenancy to continue until that date.

I find that the landlord is entitled to a monetary award of \$2250, comprised of unpaid rent of \$1100 for March 2013, \$1100 for May 2013, and recovery of the filing fee of \$50, which I have granted due to the landlord's successful application.

### **Tenant's application:**

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

### **Conclusion**

The landlord's application is granted.

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 tenant fail to vacate the rental unit

pursuant to the terms of the order after it has been served upon him, this order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court. The tenant is advised that costs of such enforcement, including bailiff fees, are recoverable from the tenant.

In partial satisfaction of the landlord's monetary award of \$2250, at the landlord's request, I direct the landlord to retain the tenant's security deposit of \$550.

I grant the landlord a monetary order pursuant to section 67 of the Act for the balance due of \$1700.

The monetary order for \$1700 is enclosed with the landlord's Decision. Should the tenant fail to pay the landlord this amount without delay after the order has been served upon him, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an order of that Court. The tenant is advised that costs of such enforcement are recoverable from the tenant.

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: May 24, 2013

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Residential Tenancy Branch