



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding KHALSA DIWAN SOCIETY OF VICTORIA  
and [tenant name suppressed to protect privacy]

## **Decision**

### **Dispute Codes:**

MNR, OPR, FF

### **Introduction**

This Dispute Resolution hearing was convened to deal with an Application by the landlord for an Order of Possession based on the Ten-Day Notice to End Tenancy for Unpaid Rent dated July 11, 2013 and a monetary order for rent owed for July 2013 and August 2013.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

### **Issue(s) to be Decided**

Is the landlord is entitled to an Order of Possession based on the Ten-Day Notice to End Tenancy, or should the Notice be cancelled as requested by the tenant?

### **Preliminary Matters**

#### **Service of the Ten Day Notice to End Tenancy for Unpaid Rent**

At the outset of the hearing, the tenant claimed that the Ten-Day Notice to End Tenancy for Unpaid Rent was not properly served on the tenant in accordance with the Act, as it was left on a table.

The landlord testified that they gave the Notice to an adult person living in the rental unit with the tenant. However, it was established that this individual is not a co-tenant and shares the space under a separate tenancy agreement.

I therefore find that the Notice was not served in accordance with the Act.

However, I find that the tenant was adequately served with the 10-Day Notice to End Tenancy for Unpaid Rent, based on the fact that the tenant submitted an application for Dispute Resolution to dispute the Notice.

### **Background and Evidence**

In evidence were copies of communications, a copy of the employment contract, a copy of a previous contract, copies of receipts, a copy of a court decision involving the landlord and another party, copies of affidavits, copies of government documents and data, a copy of the constitution of the landlord's organization and written testimony. Only the relevant evidence has been considered.

The landlord submitted into evidence a copy of the Ten-Day Notice to End Tenancy dated July 11, 2013 indicating an effective end date of July 11, 2013. The landlord testified that the tenant is a former employee who had been a staff member of the organization for approximately 12 years. The landlord testified that the latest employment contract included the provision of a rental suite on the premises to house the employee, valued at \$1,030.00 per month. A copy of the contract signed by the landlord and the tenant on July 17, 2012 is in evidence. This contract states:

*"The Society will provide you and your family board and lodging at the Temple or in its other properties adjacent to the Temple at the cost of \$1,030.00 payable at the beginning of each month by (the tenant)"*

The landlord testified that the practice followed by the landlord in the past and to date, is to deduct the rent for the *previous* month from the employee's pay cheque which is issued at the end of each month. The landlord testified that the rent is collected in arrears for the convenience of the employee based on the fact that the employee is not paid until the end of the month.

The landlord testified that the tenant's employment was terminated at the end of June 2013 and this practice was followed as usual with the tenant's cheque being reduced by \$1,030.00 for the rent owed for the month of June 2013.

The landlord pointed out that, given their expectation that the tenant was permanently terminated from his employment with the organization, they would never have deducted any advance rent for a period beyond the end of his employment.

The landlord testified that, although their expectation was that the tenant would vacate the rental unit immediately after his employment had ended, the tenant remained in the rental suite and refused to pay any rent for July 2013. The landlord testified that the tenant has not paid rent for the month of August 2013 either.

The landlord testified that, as of July 1, 2013, the rent of \$1,030.00 was due. The landlord testified that, when the tenant neglected to pay the rent owed effective July 1, 2013, a 10-Day Notice to End Tenancy for Unpaid Rent was issued on July 11, 2013 and was served on the tenant.

The landlord pointed out that the tenant did not pay the rent on the due date, failed to satisfy the arrears within 5 days to cancel the Notice and did not vacate the unit. The landlord's position is that they are entitled to an Order of Possession and a Monetary Order for rent owed based on the 10-Day Notice to End Tenancy for Unpaid Rent.

The tenant acknowledged that the rent agreed-upon under the contract is \$1,030.00. The tenant testified that \$1,030.00 was deducted from his final pay cheque issued to him at the end of June 2013. The tenant submitted a copy of a cheque he had received from the employer dated July 1, 2013 for \$650.00. There are no notations shown on this cheque, but according to the tenant, \$1,030.00 was withheld from his remuneration to pay for his rent for July 2013.

The tenant disputed the landlord's testimony that the employer/landlord followed the practice of deducting the rent for a particular month at the end of that same month. The tenant pointed out that the contract clearly states that rent is due, payable in advance.

The tenant testified that, at the beginning of the latest employment contract, signed on July 17, 2012, he had paid the landlord pro-rated rent in advance for the remainder of the month of July 2012 by giving the landlord cash. The tenant testified that this fact clearly establishes that the rent for the residential unit was being collected by the landlord in advance from August 1, 2012 to July 1, 2013. The tenant testified that after he paid the landlord in cash, he requested a receipt for the payment at that time, but the landlord refused to give him a receipt.

The tenant's witness, who claimed to be present during this alleged conversation and witnessed the transaction on July 17, 2012, fully supported the tenant's testimony and the tenant's description of what had occurred.

The landlord questioned the veracity of the tenant's witness, who is apparently a family relation, and argued that this individual would not likely have been present during such a meeting.

The landlord pointed out that, as a charitable organization financially accountable to members and the board, they never accept cash payments without issuing receipts, because they are bound to follow standard accounting practices for audit purposes. The landlord testified that, in any case, the rental portion of the tenant's contract is

never collected in cash, but is always deducted from the remuneration owed to the employee for duties performed to satisfy outstanding rent charges for that month

### **Analysis**

The Act (the Act) states that a landlord may end a tenancy if rent remains unpaid after the day it is due, by issuing a notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

I accept the testimony of both parties that the tenant was employed by the landlord until the end of June 2013 and that the rent for the unit was agreed in the contract to be valued at \$1,030.00.

I further find the tenant was served with a Ten-Day Notice to End Tenancy dated July 11, 2013. Although the tenant is disputing the Notice on the basis that rent was paid for the month of July 2013 through a deduction of \$1,030.00 from his final paycheque, the tenant was unable to produce any documentary proof that the deduction related to rent for July 2013, and not for rent owed for June 2013.

I find that the tenant's position that rent is to be collected in advance of each month is not consistent with the tenant's actions in failing to submit his rent that would be owed on August 1, 2013 for the month of August 2013, given that he has remained in the unit over-holding beyond the effective date indicated in the July 11, 2013 Ten Day Notice to End Tenancy for Unpaid Rent.

On a balance of probabilities, I find it unlikely that the landlord would have deducted rent for July 2013 in advance when the members of the board anticipated that the tenant would be moving out of the housing provided as part of his employment, which ended at the end of June 2013.

Based on the above, I find that there is insufficient evidence to support granting the tenant's request to cancel the Ten Day Notice to End Tenancy for Unpaid Rent, dated July 11, 2013. Accordingly, I find that the landlord is entitled to an Order of Possession based on the Notice.

I find that the landlord is entitled to total monetary compensation in the amount of \$2,110.00 comprised of rental arrears of \$2,060.00 for July and August 2013 and the \$50.00 fee paid by the Landlord for this application.

Based on the evidence before me, I hereby issue an Order of Possession effective two days after service on the Tenant. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

Based on the evidence presented during these proceedings, I hereby grant the landlord a monetary order for \$2,110.00. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

The tenant's application is dismissed in its entirety without leave to reapply.

**Conclusion**

The landlord is successful in the application and is granted an Order of Possession and monetary order against the tenant and the tenant's application is dismissed.

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: August 22, 2013

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Residential Tenancy Branch