



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, OLC, LRE, FF, O

### Introduction

This hearing was convened by way of conference call in response to the tenants application for more time to cancel a Notice to End Tenancy; to cancel a 10 Day Notice to End Tenancy for unpaid rent; for an Order for the landlord to comply with the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; for an Order to suspend or set conditions on the landlords right to enter the rental unit, other issues; and to recover the filing fee from the tenant for the cost of this application.

The tenant and landlord attended the conference call hearing, gave sworn testimony. The tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The evidence and testimony of the parties has been reviewed and are considered in this decision.

### Preliminary issues

The landlord testifies that he had applied for a Direct Request Proceeding on July 08, 2013. The Direct Request proceeding was held on July 12, 2013 and the landlord was awarded an Order of Possession effective two days after service and a Monetary Order for \$1,100.00 as applied for. The tenant applied for a review of that decision and Orders on July 12, 2013 and submitted that the party has evidence that the director's decision or order was obtained by fraud. A review of the decision and Order was granted by the Arbitrator on July 16, 2013.

As a result, the original Decision and Orders dated July 12, 2013 were suspended until this scheduled hearing of the tenant's application was held today. It was also noted that the tenant's evidence is that the parties appear to have entered into a legally binding Mutual Agreement to End a Tenancy effective on August 01, 2013, upon which both parties are obligated by statute to act and make effective. The tenant has testified that she vacated the rental unit on July 27, 2013.

Consequently I will deal with the landlord's application for a Monetary Order only for \$1,100.00 as originally applied for under the Direct Request proceeding at this participatory hearing today alongside the tenant's application.

#### Issue(s) to be Decided

- Is the tenant entitled to more time to file an application to cancel a Notice to End Tenancy?
- Is the tenant entitled to cancel the Notice to End tenancy for unpaid rent?
- Is the tenant entitled to an Order for the landlord to comply with the Act, Regulations or tenancy agreement?
- Is the tenant entitled to suspend or set conditions on the landlord's right to enter the rental unit?
- Is the original Monetary Order issued to the landlord to be confirmed, varied or set aside?

#### Background and Evidence

The parties agree that this tenancy started on December 01, 2012 for a fixed term ending on December 01, 2013. Rent for this unit was \$1,100.00 per month and was due on the first day of each month in advance. The tenant paid a security deposit of \$550.00 on December 01, 2012.

The tenant testifies that she did receive a 10 Day Notice to End Tenancy on July 03, 2013 which was posted to the tenants door; but states this was the first 10 day Notice from the landlord. The tenant has provided a copy of this Notice in evidence. The Notice states that the tenant has five days to either pay the outstanding rent or dispute the Notice or the tenancy will end on July 13, 2013. The tenant testifies the landlord had verbally agreed to reduce the rent to \$900.00 per month. The tenant testifies that she had given the landlord postdated cheques for the rent for June and July and the landlord returned these rent cheques so the tenant could issue a new one for June and July. The tenant confirms that the July rent cheque was not cleared at the bank due to insufficient funds. The tenant testifies that she had paid \$700.00 on June 01, 2013 and agrees that no rent was paid in July of \$900.00.

The tenant agrees that the landlord and tenant signed a mutual agreement to end the tenancy. This was signed on July 01, 2013 and was effective on August 01, 2013.

The tenant testifies that the landlord did not afford the tenant any privacy. And the tenant was afraid for her life. The tenant claims the landlord would come banging on her door each day and would enter her unit. The landlord shut off the tenant's power and said he would come each day to do that again even if the tenant had the power put into her name. The tenant testifies that this is why she had to move from the rental unit. The tenant requests an Order for the landlord to comply with the Act.

The tenant requests an Order to suspend or set conditions on the landlord's right to enter the rental unit.

The landlord testifies that they did make a verbal agreement to reduce the rent to \$900.00 for June and July however as the tenant only paid \$700.00 in June this made the verbal agreement null in void. The landlord testifies that the tenant therefore owes rent of \$400.00 for June and \$1,100.00 in rent for July. The landlord testifies that he only included the amount owed on July on his 10 Day Notice in July and on the landlords application for a Direct Request Proceeding.

### Analysis

It was discussed at the hearing that as the tenant has vacated the rental unit that her application to cancel the Notice to End Tenancy no longer has any effect as the tenancy has now ended. Even if the tenancy had not ended, as the tenant agrees that she owes rent to the landlord then had the tenant still been residing in the rental unit the landlord would have been entitled to an Order of Possession and the suspended Order of Possession would be confirmed. The 10 Day Notice issued on July 03, 2012 would have remained in force and effect. It was also explained at the hearing that as there is no tenancy now in effect that I cannot issue any Orders for the landlord to comply with the *Act* or to suspend or set conditions on the landlords right to enter the rental unit as any Orders now issued would have no effect and would not be enforceable as the tenancy has ended.

The tenant became extremely argumentative and could not understand why I was not prepared to cancel the Notice or issue these Orders to the tenant. I explained to the tenant again the reason behind my decision and eventually had to explain that my decision would be in writing to both parties as the tenant was not able to understand or listen to my oral decision.

At the review consideration the original Orders were suspended pending the outcome of this hearing. The tenant agrees that she owes rent of \$1,100.00. The landlord had applied for \$1,100.00 on his Direct Request application and a Monetary Order was issued to the landlord for that amount on July 12, 2013. At this hearing the tenant verbally agreed to allow the landlord to keep the security deposit of \$550.00 to offset against the unpaid rent. Section 82(3) of the *Act* states that

*(3) Following the review, the director may confirm, vary or set aside the original decision or order.*

Therefore it is my decision to vary the original Monetary Order to \$550.00 as I have deducted the security deposit of \$550.00 from the original Order of \$1,100.00.

### Conclusion

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

A Monetary Order has been issued to the landlord for the sum of \$550.00. This Order varies and replaces the Monetary Order issued on July 12, 2013. The Order must be served on the tenant and is enforceable through the Provincial Court as an order of that Court.

The Original Order of Possession issued on July 12, 2013 is no longer required as the tenant has since vacated the rental unit. That Order of Possession is hereby set aside.

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 14, 2013

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Residential Tenancy Branch

