



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes            OPC CNR MNDC FF

### Preliminary Issues

In the course of this proceeding and upon review of the Landlord's application, I have determined that I will not deal with all the dispute issues the Landlord has placed on their application. Not all the claims on this application are sufficiently related to the main issue to be dealt with together and are premature as the Tenant is still occupying the rental unit. Therefore, I will deal with the Landlord's request for an Order of Possession for Cause, a monetary order for unpaid rent, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and their request to recover the filing fee; and I dismiss the balance of the Landlord's claim with leave to re-apply.

### Introduction

This hearing dealt with an Application for Dispute Resolution filed on July 22, 2013, by the Landlord.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

### Issue(s) to be Decided

1. Should the Landlord be granted an Order of Possession for cause?
2. Should the Landlord be granted a Monetary Order for unpaid rent?

### Background and Evidence

The Landlord submitted documentary evidence which included, among other things, copies of: a 1 Month Notice to end tenancy for cause; a payment receipt; and eleven photos.

The parties confirmed they entered into a written month to month tenancy agreement that began on August 1, 2012. Rent is payable on the first of each month in the amount of \$600.00 plus monthly utilities of \$50.00. The Tenant paid a security deposit of \$300.00 prior to moving into the unit.

The Landlord testified that she personally served the Tenant a 1 Month Notice for Cause on June 23, 2013 in the presence of the Tenant's friend. During the service of the Notice the Tenant's friend pointed out that it had an incorrect issue date and an incorrect effective date so the Landlord amended the notice to show it was issued June 23, 2013, and was to be effective July 23, 2013.

The Tenant confirmed she was served the 1 Month Notice with the incorrect dates but could not locate her copy of the Notice. She stated she did not file an application to dispute the Notice and she has found a new home which she takes possession of effective September 1, 2013.

The Landlord advised that the Tenant failed to pay August rent and she has an accumulated amount owing of \$460.00 that was from June 2013. The Tenant paid her full amount of July rent sometime prior to the Landlord filing her application on July 22, 2013 which is prior to the effective date of the 1 Month Notice.

The Tenant confirmed that she has not paid rent since getting the 1 Month Notice and that she still owes money from June 2013 but she was not sure on the amount owed.

### Analysis

In this case the Tenant confirmed receipt of the 1 Month Notice that was personally served to her on June 23, 2013, and confirmed she did not make application to dispute the Notice.

Section 53(2) of the Act provides that incorrect effective dates of Notices to End Tenancy are automatically changed to the earliest date that complies with the Act. Therefore, in this case the 1 Month Notice to End Tenancy that was issued on June 23, 2013, would have an effective date of July 31, 2013.

Section 47(5) of the Act stipulates that if a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and (b) must vacate the rental unit by that date.

As per the aforementioned, I find this tenancy ended as of the effective date of the Notice, which was automatically corrected to **July 31, 2013**, and I award the Landlord an Order of Possession.

Section 26 of the Act stipulates that a tenant must pay rent when it is due in accordance with the tenancy agreement. The Tenant did not pay all of her June 2013 rent; therefore, I award the Landlord monetary compensation for June 2013 rent in the amount of **\$460.00**.

As noted above this tenancy ended **July 31, 2013**, in accordance with the 1 Month Notice. Therefore I find the Landlord is seeking money for use and occupancy of the unit for August 2013, not rent. The Tenant is still occupying the unit which means the Landlord will not regain possession until after service of the Order of Possession and they will have to work to find replacement tenants. Therefore, I find the Landlord is entitled to use and occupancy and any loss of rent for the entire month of August 2013, in the amount of **\$600.00**.

The Landlord has been successful with their application; therefore I award recovery of the **\$50.00** filing fee.

Any deposits currently held in trust by the Landlord are to be administered in accordance with Section 38 of the *Residential Tenancy Act*.

I have included with my decision a copy of "A Guide for Landlords and Tenants in British Columbia" and I encourage the parties to familiarize themselves with their rights and responsibilities as set forth under the *Residential Tenancy Act*.

#### Conclusion

I HEREBY FIND that the Landlord is entitled to an Order of Possession effective **two days after service on the Tenant**. This Order is legally binding and must be served upon the Respondent Tenant.

The Landlord has been awarded a Monetary Order in the amount of **\$1,110.00** (\$460.00 + \$600.00 + \$50.00). This Order is legally binding and must be served upon the Tenants. In the event that the Tenants do not comply with this Order it may be filed with the Province of British Columbia Small Claims Court and 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: August 27, 2013

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Residential Tenancy Branch

