



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## Decision

### Dispute Codes

*OPR, MNR, MNDC, MNSD, CNC, FF.*

### Introduction

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*.

The landlord applied for the following:

- An order of possession pursuant to Section 55;
- A monetary order for rent owed, pursuant to Section 67;
- An order to retain all or part of the security deposit pursuant to Section 38;
- A monetary order for the recovery of the filing fee, pursuant to Section 72.

The tenant applied for the following:

- An order to cancel the One-Month Notice to End Tenancy for Cause, pursuant to Section 47;

Despite being served with the Notice of Hearing, the tenant failed to appear and the hearing was conducted in the tenant's absence.

As the tenant did not appear to present her evidence in support of an order to cancel the One Month Notice to End Tenancy for Cause, the tenant's application is dismissed.

The hearing proceeded only on the landlord's application relating to the 10-Day Notice to End Tenancy for Unpaid Rent and the monetary compensation for rental arrears.

### Issues to be decided: Landlord's Application

- Is the landlord entitled to an order of possession for unpaid rent?
- Is the landlord entitled to compensation for rent still outstanding?

### **Preliminary Matter Tenant's Application: 1 Month Notice for Cause**

As the tenant did not appear to dispute the One-Month Notice to End Tenancy for Cause dated August 2, 2013, the tenant's application is dismissed without leave and the One-Month Notice to End Tenancy for Cause is not cancelled and remains in force..

At the hearing, after the tenant's application was dismissed, the landlord made a request for an order of possession. Under the provisions of section 55(1)(a), upon the request of a landlord, I must issue an order of possession when I have upheld a Notice to End Tenancy.

With respect to the effective date of the termination of the tenancy, I find that section 53 (1) of the Act states that, if a landlord or tenant gives notice to end a tenancy effective on a date that does not comply, the effective date on the notice is deemed to be changed in accordance with the Act. Subsection 53 (2) provides that, if the effective date stated in the notice is *earlier* than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section.

In this case, the landlord issued the Notice on August 2, 2013 with a purported effective date of August 31, 2013.

The Act states that a Notice under section 47 must end the tenancy effective on a date that is: (a) not earlier than one month after the date the notice is received, and; (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement. In this case I find that the rent was due on the first day of each month.

Therefore, I find that with a One-Month Notice served to the tenant on August 2, 2013, the earliest date that this tenancy could be ended would be **September 30, 2013**.

Based on the above, I find that the landlord's One-Month notice must be amended to show September 30, 2013 as the effective date to comply with the Act.

Accordingly, I grant the landlord an Order of Possession effective on September 30, 2013. The tenant must be served with the order of possession. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

### **Background and Evidence: 10 Day Notice, Landlord's Cross Application**

I have already found that the landlord is entitled to an Order of Possession based on the dismissal of the tenant's application to cancel the One Month Notice to End Tenancy for Cause dated August 2, 2013.

The hearing continued with respect to the portion of the landlord's application seeking monetary compensation for rental arrears, based on the 10-Day Notice to End Tenancy for Unpaid Rent.

The tenancy began on October 1, 2012 and current rent is \$1,000.00. A security deposit of \$550.00 was paid.

The landlord had submitted into evidence a copy of the tenancy agreement. The landlord testified that under the tenancy agreement the rent is shown as \$1,100.00 but was lowered to \$1,000.00 per month. The landlord testified that on August 1, 2013 the tenant owed \$1,000.00 for rent. The landlord testified that throughout the tenancy, the tenant repeatedly failed to pay the rent when it was due.

The landlord testified that on August 1, 2013, a Ten-Day Notice to End Tenancy was immediately issued and served in person on the tenant the same day, seeking payment of arrears in the amount of \$1,000.00.

The landlord stated that, despite service of the Ten Day Notice to End Tenancy for Unpaid Rent on August 1, 2013, the tenant never did pay the \$1,000.00 rent owed.

**Analysis:**

A landlord can issue a Notice to End Tenancy for Unpaid Rent under section 46 of the Act when rent is in arrears. The determination to be made is whether the Notice was validly issued under the Act.

Based on the testimony of the landlord, I find that the tenant was served with a Notice to End Tenancy for Unpaid Rent in person on August 1, 2013.

In this instance, I find that the Notice had erroneously indicated that the tenant was in rental arrears on August 1, 2013 when, in fact, the tenant was not yet in arrears at the time the notice was signed. I find that the tenant would have been, and actually was, in arrears by August 2, 2013 and a valid Ten Day Notice to End Tenancy for Unpaid Rent should not have been issued by the landlord until August 2, 2013.

In regard to the date the Notice was signed by the landlord, neither the Act nor the Residential Tenancy Rules of Procedure, grant a dispute resolution officer the authority to retro-actively correct the date that a Notice was issued or signed.

Therefore, I find that, although the tenant owed rent for August 2013, the Notice dated August 1, 2012, is not enforceable. Because of the premature date of issue, the tenancy cannot be ended based on this flawed Notice and it must therefore be cancelled.

Based on the One-Month Notice to End Tenancy for Cause dated August 2, 2013, I hereby issue an Order of Possession in favour of the landlord effective September 30, 2013. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

I find that the landlord is entitled to be reimbursed for the \$50.00 cost of filing this application. I order that the landlord retain this amount from the tenant's \$550.00 security deposit leaving \$500.00 still held in trust. The remainder of the landlord's application is dismissed with leave.

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

### **Conclusion**

The tenant's application to cancel the One-Month Notice to End Tenancy for Cause is not successful and is dismissed. The landlord is partly successful in the cross application and is granted an Order of Possession on request and the remainder of the landlord's application is dismissed with leave.

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: September 23, 2013

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Residential Tenancy Branch

