



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      For the tenant: CNR, MNR, MNSD, FF, MT  
For the landlord: MNR, OPR, MND, FF

### Introduction

This hearing was convened as the result of 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 or Utilities (the “Notice”), a monetary order for a return of her security deposit, a monetary order for the cost of emergency repairs, and for recovery of the filing fee.

The landlord applied for a monetary order for unpaid rent, for an order of possession for the rental unit due to unpaid rent, a monetary order for alleged damage to the rental unit, and to recover the filing fee for the application.

The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties were provided the opportunity to present their evidence orally, refer to documentary evidence submitted prior to the hearing, and make submissions to me.

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

I have reviewed the oral and written evidence of the parties before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

*Preliminary issue #1*-I have determined that the portion of the tenant’s application dealing with a request for monetary compensation for emergency repairs is unrelated to the primary issue of disputing the Notice. As a result, pursuant to section 2.3 of the Residential Tenancy Branch Rules of Procedure, I have severed the tenant’s application

and dismissed that portion of the tenant's request for that order, with leave to reapply. I have not dealt with the tenant's request for a return of a security deposit, as she confirmed that this was mistakenly marked on her application as she had paid no security deposit.

*Preliminary issue #2*-On a procedural matter, both parties submitted documentary evidence late, less than five business days prior to the hearing.

Section 3.5 of the Rules requires copies of any documents, that were not available to be filed with the application, but which the applicant, the tenant in this case, intends to rely upon as evidence at the dispute resolution proceeding, must be received by the Residential Tenancy Branch and must be served on the respondent, the landlord in this case, as soon as possible, and at least (5) days before the dispute resolution proceeding as those days are defined the "Definitions" part of the Rules of Procedure.

Rule 11.5 states that the Arbitrator may refuse to accept the evidence if the Arbitrator determines that there has been a wilful or recurring failure to comply with the Act or the Rules of Procedure, or, if for some other reason, the acceptance of the evidence would prejudice the other party, or result in a breach of the principles of natural justice.

In this case, I find that the tenant failed to make a timely submission of evidence and I have excluded her evidence for the purpose of this Decision. Additionally, the landlord submitted late evidence, presumably in response to the tenant's late evidence, but as I have not accepted the tenants' evidence, I have not considered the landlord's evidence.

Both parties were allowed to testify with reference to their documentary evidence.

#### 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

The parties did not dispute the following facts: That this tenancy began on June 1, 2012, monthly rent is \$550, that the tenant did not pay a security deposit and that there was no move-in inspection of the rental unit.

Also undisputed is that the owner is an absentee landlord, that he previously had another property manager at the beginning of this tenancy, who was terminated from employment in August 2013, and that the new owner's representative took over management of the property on August 22, 2013.

Pursuant to the Residential Tenancy Branch Rules of Procedure, the landlord and his agent proceeded first in the hearing to explain or support the Notice to End Tenancy.

The landlord's agent stated that he served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent on August 28, 2013, via personal delivery, listing unpaid rent of \$650 and a "damage" deposit. The landlord's agent stated also that the tenant has been served two subsequent Notices for September and October 2013, as the tenant has failed to pay rent for those two months.

I informed the parties that I would not consider any other Notices to end the tenancy served by the landlord, as the Notice at issue in the two applications was the one dated and delivered on August 28, 2013. It is apparent that the tenant filed an application for dispute resolution in dispute of the August 28 Notice, as her application date shows that it was filed on September 6, 2013.

The landlord explained that the tenant had a rent deficiency of \$100 for the month of July, which was why that amount was included as unpaid rent for August 2013.

The landlord and his agent submitted that the tenant has not made a rent payment since issuance of the Notice in August, and owes the amount of \$1750 in total unpaid rent for July, in the amount of \$100, and \$550 each for August, September, and October, which is the amount of their monetary claim listed in the amended application.

In response, the tenant claimed that she paid rent for the month of August, in cash to the previous property manager, who has since been fired by the landlord.

In response to my question, the tenant could not provide a specific date she claimed to have paid the rent and had not produced any other evidence that the rent was paid, such as with a bank withdrawal transaction, although she claimed to have such proof.

Additionally, the tenant said that she had a witness to her payment; however, the witness was not made available, although, according to the tenant, she had come and gone during the hearing.

As to the rent for September, the tenant confirmed that she did not pay the rent, due to having to pay the roofer, who had not been paid by the landlord for a necessary repair. The tenant claimed that she had an agreement with the previous property manager, as the landlord refused to make repairs to the rental unit, and that the roofer kept knocking on her door, seeking payment.

The tenant confirmed that she did not pay the rent for October as she wanted to wait for her dispute resolution hearing.

In response, the landlord denied the lack of repairs, and stated that he, as a contractor for 23 years, had no problem in paying for or repairing the rental unit. The landlord also submitted that the roof was new at the beginning of the tenancy.

### Analysis

#### **Landlord's Application (considered first in this Decision due to their having the burden of proof of supporting their Notice:**

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. If the tenant fails to pay rent, the landlord may issue the tenant a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, under section 46 of the Act.

As to the matter of the rent for August, I find that the tenant failed to convince me that she paid rent. The tenant refers to information, such as bank records, to which she had access and to which she could have produced, but failed to do so. Additionally, the tenant said she had a witness, but failed to produce the witness. Finally, the tenant was hesitant when asking the date the rent was paid, and could not name a specific date. I therefore find the tenant submitted insufficient evidence that she paid rent for August 2013.

As to the September rent, which the tenant claimed she withheld due to having to pay a roofer, I find the tenant submitted insufficient evidence that she had a legal right to withhold rent. A legal right may include the landlord's consent for deduction or authorization from an Arbitrator, which I do not find to be the case here. The tenant may also withhold rent for expenditures incurred to make an "emergency repair," as defined in section 33 of the Act. I find the tenant has not met this criterion, as I do not find the tenant submitted sufficient evidence that there was a major leak in the roof.

In the case before me, I am convinced that the tenant owed the landlord rent when the Notice was issued and that she did not pay all or any of the rent owed to the landlord within 5 days of receiving the Notice.

I also find that the tenant was in possession of the rental unit on October 1, 2013, when monthly rent was due, and is obligated to pay rent for that month.

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

I find that the landlord is entitled to and I therefore grant an order of possession for the rental unit effective 2 days after service upon the tenant.

I find the landlord submitted sufficient evidence that the tenant owed the amount of \$550 for unpaid rent for August, September, and October 2013, each.

I therefore find that the landlord is entitled to a monetary award of \$1700, comprised of unpaid rent of \$550 for August 2013, \$550 for September 2013, \$550 for October and recovery of the filing fee of \$50, which I have granted due to the landlord's successful application.

I have not granted the landlord \$100 for a rent deficiency for July, as I find the landlord submitted insufficient evidence that such was owed that month.

### **Tenants' application:**

Due to the above, the tenant's application for dispute resolution seeking a cancellation of the Notice is dismissed without leave to reapply as I find the Notice to End Tenancy issued is valid and enforceable and I have granted the landlord an order of possession for the rental unit.

I also dismiss her request to recover the filing fee.

### **Conclusion**

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 them, 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 are recoverable from the tenant.

I grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the amount of \$1700, which I have 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 her, 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 for cancellation of the Notice is dismissed, without leave to reapply.

The portion of the tenant's application seeking monetary compensation from the landlord is dismissed, with 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: October 09, 2013

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Residential Tenancy Branch

