



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

Tenant's application (filed September 30, 2013): CNC

Landlord's application (filed October 7, 2013): OPC; MNR; MNDC; FF

### **Introduction**

This Hearing was convened to consider cross applications. The Tenant seeks to cancel a Notice to End Tenancy for Cause issued September 16, 2013 (the "Notice").

The Landlord seeks an Order of Possession; a Monetary Order for unpaid rent; compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Tenant.

The parties gave affirmed testimony at the Hearing.

It was established that the Tenant served the Landlord with her Notice of Hearing documents by mail. The Tenant did not provide any documentary evidence to the Residential Tenancy Branch, or to the Landlord.

The Landlord served the Tenant with his Notice of Hearing documents and copies of his documentary evidence on October 7, 2013.

### **Issues to be Decided**

- Should the Notice be upheld or canceled?
- Is the Landlord entitled to a monetary award for unpaid rent, loss of revenue and late fees?

### **Background and Evidence**

The Landlord served the Tenant with the Notice on September 16, 2013, by handing the Notice to the Tenant. The Tenant filed her application to cancel the Notice on September 30, 2013.

I explained to the Tenant that she had 10 days from receipt of the Notice to file her Application to cancel the Notice.

The Tenant's Application did not seek more time to file her application to cancel the Notice; however in the circumstances, I asked her why she waited so long to file her application. The Tenant stated that she was late filing the Notice because she didn't know what she was supposed to do and that this is the first time she has been to Dispute Resolution.

The Landlord stated that the Tenant was late paying rent in October. He stated that he had not received rent for November yet, but that if the Tenant instructed the Ministry to send him rent for November, he would accept it for use and occupancy and serve her with the Order of Possession two days before the last day of November, 2013.

### **Analysis**

Section 47 of the Act requires a tenant to file an application to cancel a notice to end tenancy for cause within 10 days after receipt of the notice. Section 47 of the Act also provides that if a tenant does not dispute the notice to end tenancy within 10 days, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must move out. Section 53 of the Act provides that if a notice to end tenancy gives an effective date that does not comply with the Act, the notice is deemed to be changed to the earliest date that complies with the Act. In this case, that date is October 31, 2013.

Section 66 of the Act provides me with the authority to extend the time to file an application to cancel a notice to end tenancy, but only in exceptional circumstances.

The Notice also indicates, in part, on page two:

"You have the right to dispute this Notice within 10 days after you receive it by filing an Application for Dispute Resolution at the Residential Tenancy Branch. A Dispute Resolution Officer may extend your time to file an application, but only if he or she accepts your proof that you had a serious and compelling reason for not filing the Application on time.

If you do not file an Application within 10 days, you are presumed to accept this Notice and must move out of the rental unit."

Based on the Tenant's testimony, I find that she did not provide sufficient evidence of an exceptional circumstance or serious and compelling reason for not filing the Application on time. Therefore, I dismiss the Tenant's Application to cancel the Notice.

I find that the effective date of the end of tenancy was October 31, 2010. The Landlord's application for an Order of Possession is granted, **effective 2 days after service of the Order upon the Tenant.**

The Landlord indicated that he would accept payment of November's outstanding rent for use and occupancy of the rental unit only. If the Tenant pays the outstanding rent, then the Landlord will serve the Order of Possession on November 28, 2013. If the Tenant does not pay the outstanding rent immediately, the Landlord is at liberty to serve the Order of Possession forthwith.

The Landlord's application for a monetary order is dismissed **with leave to reapply.**

The Landlord's application had merit and I find that he is entitled to recover the cost of the filing fee from the Tenant. Pursuant to the provisions of Section 72 of the Act, the Landlord may retain **\$50.00** from the security deposit paid by the Tenant. The remainder of the security deposit must be administered in accordance with the provisions of Section 38 of the Act.

### **Conclusion**

The Tenant's application is **dismissed** in its entirety.

I hereby grant the Landlord an Order of Possession **effective 2 days after service of the Order upon the Tenant.** This Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

The Landlord may retain **\$50.00** from the security deposit, in recovery of the cost of the filing fee. The remainder of the security deposit must be administered in accordance with the provisions of Section 38 of the Act.

The Landlord's application for a monetary order for unpaid rent and loss of revenue 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: November 07, 2013

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Residential Tenancy Branch

