



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      Landlords: OPR, OPL, MNR, MNSD, FF  
Tenant: CNR, RPP, LRE, FF

### Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlords sought an order of possession and a monetary order. The tenant sought to cancel a notice to end tenancy and orders against the landlords

The hearing was conducted via teleconference and was attended by both landlords; the tenant and his witness.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent and/or for landlord's use of property; to a monetary order for unpaid rent; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 46, 49, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenant is entitled to cancel a 10 Day Notice to End Tenancy for Unpaid Rent; to an order requiring the landlord to return personal possessions; and to an order to suspend or set conditions on the landlord's right to enter the rental unit, pursuant to Sections 29, 46, and 70 of the *Act*.

### Background and Evidence

The landlord provided a copy of a tenancy agreement signed by the parties on August 24, 2011 for a month to month tenancy beginning on August 1, 2011 for a monthly rent of \$725.00 due on the 1<sup>st</sup> of each month with a security deposit of \$362.50 paid. The current rent is \$752.20.

The landlord also provided copies of the following documents:

- A copy of a 2 Month Notice to End Tenancy for Landlord's Use of Property issued on September 30, 2013 with an effective date of November 30, 2013 citing the landlord has all necessary permits and approvals required by law to

demolish the rental unit or repair the rental unit in a manner that requires the rental unit be vacant; and

- A copy of a 10 Day Notice to End Tenancy issued by the landlord on November 2, 2013 with an effective vacancy date of November 12, 2013 due to \$752.20 in unpaid rent due October 1, 2013.

The landlords submit that they dated the 2 Month Notice September 30, 2013 but gave it to him on September 28, 2013. The landlords submit that they had the tenant sign an acknowledgement that he had received the 2 Month Notice and they provided the tenant with a letter explaining they would compensate the tenant when vacated the rental unit in the amount of 1 month's rent. The letter states: "Please find, enclosed, the required Residential Tenancy Act's 2 Month Notice to end Tenancy."

The tenant submits that while he received the letter and that he signed the acknowledgement document noting that he was not sure the notice was given using the proper process the landlords did not provide him a copy of 2 Month Notice at this time. The tenant submits that when the landlord served him with the 10 Day Notice on November 2, 2013 he received the 2 Month Notice in the same envelope.

The landlords submit that the tenant failed to pay rent when it was due for October 2013 and on November 2, 2013 they issued the tenant a 10 Day Notice to End Tenancy for Unpaid Rent.

The tenant submits that he paid the landlord the rent for the months of October and November 2013 on October 1, 2013 in cash but that the landlord never provided a receipt. The tenant submits that he very often paid rent by cash and the landlord never provided receipts. The tenant submits the landlords requested that he pay these two rents together and in cash.

The landlords submit that the tenant only paid in cash once at the start of the tenancy and that they had issued a receipt at that time but that they had received no rent from the tenant for October and November. The landlords submit that they did not ask for cash or for the payment of the two month's rent at the same time.

The landlord seeks to obtain an order of possession for either or both of the Notices to end tenancy. The tenant seeks to cancel the 10 Day Notice to End Tenancy for Unpaid Rent. The tenant submits that he was advised by an Information Officer with the Residential Tenancy Branch that it was not necessary for him to apply to cancel the 2 Month Notice and as he already had applied for it he crossed it out.

I note that on the tenant's Application for Dispute Resolution the tenant had checked off that he sought more time to make an application to cancel a Notice to End Tenancy but that he later scribbled that out and initialed that change. I do not see that he had ever checked off the box to cancel the 2 Month Notice.

The tenant submits that ever since about a year into the tenancy personal items from his rental unit have gone missing and in some cases once used they had been returned. The tenant submits items such as a dozen pairs of underwear; a dozen pairs of socks; various food items (both frozen and thawed and sundries); liquids were watered down; several pairs of cargo pants; dress shirts and razor blades. He states that after a while he stopped keeping track. The tenant submits that when these items started going missing he asked the landlord to activate the security alarm.

The tenant and his witness submit that they set traps in the rental unit such as placing a number of books on a table before they went out for several hours and upon return they could tell the items had been moved. The tenant and witness both testified they had photographic evidence of these items but they did not provide any of the photographs into evidence.

The tenant submits that the most recent issue was in September 2013 when he came home and \$5,000.00 he had in cash had been removed from his unit. The tenant testified that he did not report this theft to police. He stated that he works often with police and they told him there was nothing they could do if he did not have any evidence. The tenant submits that he had the cash to pay for orthodontic treatment that had to be paid for in cash.

The tenant submitted documentation from the orthodontic program that states the total cost of the program was \$4,200.00 to be paid as an initial \$250.00 payment for records; \$750.00 for bracket placement; and then beginning March 1, 2014 20 monthly payments of \$160.00. The document states the program does not accept cheques.

The tenant suspects the landlord has been responsible for all of these items going missing and seeks to have his personal possessions return and to suspend or set limits on the landlord's right to enter the rental unit. The tenant does not seek compensation for any of the items he states had been returned but had been worn out.

### Analysis

Section 49 of the *Act* allows a landlord to end a tenancy by issuing a notice to end tenancy with an effective date not earlier than 2 months after the date the tenant receives the notice and the day before the day in the month that rent is payable under the tenancy agreement if the landlord has all the necessary approvals required by law, and intends in good faith, to renovate or repair the rental unit in a manner that requires the rental unit to be vacant.

Section 49(8) goes on to say that within 15 days of receiving such a notice the tenant may dispute the notice by making an application for dispute resolution. And Section 49(9) states that if a tenant who receives a notice under Section 49 does not file an application for dispute resolution within 15 days the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date.

From the documentary evidence before me and based on the balance of probabilities I find the landlord served the tenant with a 2 Month Notice to End Tenancy for Landlord's Use of Property dated September 30, 2013 on September 28, 2013. I find it unlikely that a landlord who was clearly aware of the need to use a 2 Month Notice from the Residential Tenancy Branch as noted in their letter to the tenant would then fail to provide the tenant with a copy of the Notice they said was attached to the letter.

As such, I am satisfied the 2 Month Notice to End Tenancy for Landlord's Use of Property with an effective date of November 30, 2013 was served to the tenant on September 28, 2013. Further, I find the tenant failed to apply to dispute the 2 Month Notice to End Tenancy for Landlord's Use of Property and is therefore conclusively presumed to have accepted the tenancy will end on November 30, 2013.

Section 46 of the *Act* allows a landlord to end a tenancy if rent is unpaid on any day after the day it is due by giving the tenant notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

As to the payment of rent and the issue of the 10 Day Notice to End Tenancy for Unpaid Rent issued by the landlord I find the tenant has failed to provide any evidence to support his position that the landlords specifically required a cash payment of rent; that they requested the payment of October and November rent on October 1, 2013 or that he made such a payment by cash.

As such, I find the 10 Day Notice to End Tenancy to also be valid and effective and the tenant must vacate the rental unit in accordance with the 10 Day Notice. I also find the landlords are entitled to the rent monies owed for the months of October and November 2013.

However, Section 51 of the *Act* states a tenant who receives a notice to end tenancy under Section 49 (landlord's use of property) is entitled to receive from the landlord compensation equivalent to one's month rent payable under the tenancy agreement. Therefore I order that the rent for November 2013 is not required to be paid by the tenant and will constitute this compensation.

As to the tenant's claims to have his personal possessions returned, I find the tenant has provided no evidence to corroborate any such losses. I also find it unlikely that a tenant would not raise these issues either with the landlord or with the police at some point during the course of the tenancy.

In particular, I find the tenant's testimony regarding the \$5,000.00 to not credible. The requirements of the orthodontic program that the tenant submits he had the money for indicates that payments would be paid monthly in the amount of \$160.00 and that total cost would be \$4,200.00 and yet the tenant submits that he had this \$5,000.00 to make this payment. I also find, on the balance of probabilities, that it is extremely unlikely for a person who had had \$5,000.00 stolen from him would not report the theft to police.

As I have found the tenancy has ended I make no orders related to suspending or set conditions on the landlords' right to enter the rental unit.

Conclusion

For the reasons noted above, I dismiss the tenant's Application in its entirety.

I find the landlord is entitled to an order of possession effective **two days after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$802.20** comprised of \$1504.40 rent owed and the \$50.00 fee paid by the landlord for this application less \$752.20 compensation owed to the tenant pursuant to Section 51.

I order the landlord may deduct the security deposit and interest held in the amount of \$362.50 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$439.70**.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: November 25, 2013

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Residential Tenancy Branch

