



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding GBMW Properties Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR, LRE, O, OPR, MNR, MNSD, FF

### Introduction

This was a hearing with respect to applications by the tenant and by the landlord. The hearing was conducted by conference call. The tenant called in and participated in the hearing and the landlord's named representatives also called in and participated in the hearing. The tenant applied to cancel a Notice to End Tenancy for unpaid rent and for an order suspending or setting conditions on the landlord's right to enter the rental unit. He requested permission to sublet and requested other unspecified relief. The landlord applied for an order for possession and a monetary order for unpaid rent.

### Issue(s) to be Decided

Should the Notice to End Tenancy be cancelled? Is the landlord entitled to an order for possession?

Is the landlord entitled to a monetary award and if so, in what amount?

Is the tenant entitled to an order restricting the landlord's access to the rental unit?

Is the tenant entitled to a direction permitting him to assign or sublet the rental unit?

### Background and Evidence

The rental unit is an apartment in Maple Ridge. The tenancy began on May 15, 2013, but the written tenancy agreement provided that the tenancy would commence June 1<sup>st</sup>, 2013. The tenant paid a security deposit of \$365.00 on May 31, 2013. The monthly rent is \$730.00, payable on the first day of each month.

The tenant did not pay October rent when it was due and on October 2, 2013 the landlord served the tenant with a 10 day Notice to End Tenancy by posting it to the door of the rental unit. The tenant, who had already submitted an application for dispute resolution on October 1, 2013, amended his application to apply to dispute the Notice to End Tenancy. He submitted his amended application on October 8, 2013. The

landlord's representative testified that no rent has been paid since the Notice to End Tenancy was given and the rent for October and November is now outstanding.

The tenant testified about a list of complaints concerning the rental property and particularly the landlord's resident manager, named as a respondent in the tenant's application. He said that he told the owner of the property that he would only pay the rent after the owner came to talk to him about problems with the rental property and with the landlord's resident manager. The tenant acknowledged that the rent for October and November has not been paid, but he said that he has the rent money and is prepared to pay it.

The landlord gave the tenant a letter dated October 2, 2013. The letter stated that the owner was at the rental property from 11:00 A.M. until 3:00 P.M. to meet with the tenant. In the letter the manager went on to say that: "We assume you have no intention of meeting with the owner nor paying your rent. Consequently we are issuing a 10 Day Notice to End Tenancy for unpaid rent." At the hearing the landlord's representative said that the landlord is unwilling to continue the tenancy and he requested an order for possession and a monetary order for unpaid rent.

### Analysis

The *Residential Tenancy Act* provides by section 26 (1) that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent. The *Residential Tenancy Act* permits a tenant to deduct an amount from a rent payment without first obtaining an order only when the tenant has paid for emergency repairs as defined by the Act and the landlord has not reimbursed the tenant after the tenant has provided written particulars to the landlord. The only other exception to the requirement to pay rent is contained in section 43(5) of the Act; it provides that: If a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase.

The tenant has not performed any repairs and there has been no rent increase since commencement of the tenancy. The tenant has not claimed to have overpaid rent and there is no evidence that he ever paid any amount greater than the monthly amount required under the tenancy agreement. The tenant has not paid any rent for October or November. The tenant has not established that he has any basis for withholding rent payments and I find that he has not provided evidence of any ground that would excuse

him from his obligation to pay rent. The tenant's application to cancel the 10 day Notice to End Tenancy for unpaid rent is therefore dismissed without leave to reapply.

The landlord has applied for an order for possession and a monetary order for unpaid rent. The landlord requested an immediate order for possession

### Conclusion

The tenant's application to cancel the Notice to End Tenancy has been dismissed. I grant the landlord an order for possession effective two days after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that court.

Because the tenancy has ended, there is no basis for an order restricting or setting conditions with respect to access to the rental unit and there is no basis for the tenant's application for permission to assign or sublet and these claims by the tenant are also dismissed without leave to reapply.

I find that the landlord is entitled to a monetary award for unpaid rent for October and for half of November. I award the landlord the sum of \$1,095.00 for unpaid rent up to November 15<sup>th</sup>. The landlord is entitled to recover the \$50.00 filing fee for its application, for a total award of \$1,145.00. I order that the landlord retain the \$365.00 security deposit that it holds, in partial satisfaction of this award and I grant the landlord an order under section 67 for the balance of \$780.00. This order may be registered in the 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: November 08, 2013

---

Residential Tenancy Branch

