



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR OPC MNR MNSD FF  
                             CNC CNR MNSD RR

### Preliminary Issues

Upon review of the Landlord's application for dispute resolution the Landlord listed the following in the Details of Dispute: *"I want rent for Nov and loss of revenue for Dec. 2013 and Jan. 2014"*.

Based on the aforementioned I find the Landlord had an oversight or made a clerical error in not selecting the box *for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement* when completing the application, as she clearly indicated her intention of seeking to recover losses for November, December, 2013, and January 2014. Therefore I amend her application, pursuant to section 64(3)(c) of the Act.

### Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord filed on November 13, 2013, seeking Orders of Possession for unpaid rent or utilities and for Cause. In addition, the Landlord has sought to obtain a Monetary Order for: unpaid rent or utilities; for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement; to keep all of the security deposit; and to recover the cost of the filing fee from the Tenant for this application.

The Landlord testified that she witnessed her son personally serve the Tenant with copies of the Landlord's application for dispute resolution and Notice of dispute resolution hearing, on November 15, 2013. Based on the submissions of the Landlord I find the Tenant was sufficiently served notice of this proceeding in accordance with section 89 of the Act.

The Landlord appeared, gave affirmed testimony, was provided the opportunity to present their evidence orally, in writing, and in documentary form.

No one appeared on behalf of the Tenant despite the Tenant being served with notice of the Landlord's application in accordance with the Act and despite having his own application for dispute resolution scheduled for the same hearing date and time.

#### Issue(s) to be Decided

1. Is the Landlord entitled to an Order of Possession?
2. Is the Landlord entitled to a Monetary Order?
3. Should the Tenant's application be dismissed with or without leave to reapply?

#### Background and Evidence

The Landlord testified that she entered into a verbal month to month tenancy agreement with the Tenant which began on August 1, 2013. Rent is payable on the first of each month in the amount of \$550.00 and on July 5, 2013, the Tenant paid \$275.00 as the security deposit.

The Landlord stated that the Tenant was personally served with the following: a 1 Month Notice for cause on October 28, 2013, a 10 Day Notice for unpaid rent on November 4, 2103; and several written letters, as provided in her evidence. The Tenant has not paid rent for November and December 2013, and has not paid rent for January 2014. He continues to reside in the rental unit and refuses to pay the rent.

The Landlord pointed to the Tenant's letter, provided in evidence, which indicates he attempted to pay rent and it was refused. She stated that at no time did the Tenant attempt to pay rent and each time they ask for rent he tells them he is holding the rent in trust. She also pointed to the letter in evidence from the Cable Company which confirms the Tenant set up an account in the Landlord's name, without her permission. This account has since been cancelled and the Landlord is not being held responsible for the outstanding balance.

The Landlord is seeking possession as soon as possible and the money for rent.

There was no testimony provided in support of the Tenant's application as no one attended the proceeding on behalf of the Tenant.

#### Analysis

#### **Tenant's Application**

Section 61 of the *Residential Tenancy Act* states that upon accepting an application for dispute resolution, the director must set the matter down for a hearing and that the Director must determine if the hearing is to be oral or in writing. In this case, the hearing was scheduled for an oral teleconference hearing.

In the absence of the Applicant Tenant, the telephone line remained open while the phone system was monitored for twelve minutes and no one on behalf of the Applicant Tenant called into the hearing during this time. Based on the aforementioned I find that the Tenant has failed to present the merits of their application and the application is dismissed, without leave to reapply.

### **Landlord's Application**

When a tenant receives a 10 Day Notice to end tenancy for unpaid rent they have (5) days to either pay the rent in full or to make application to dispute the Notice or the tenancy ends.

In this Tenant did not pay the rent; however, he did apply to cancel the 10 Day Notice on November 5, 2013, within the required time frame. That being said, the Tenant's application to dispute the 10 Day Notice was dismissed, as listed above. Therefore the 10 Day Notice is of full force and effect.

The Tenant received the 10 Day Notice on November 4, 2013, and the effective date of the Notice is **November 14, 2013**, in accordance with section 46 of the Act. The Tenant did not pay the rent and he did not appear at the hearing to dispute the Notice, therefore, 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 to which the notice relates, pursuant to section 46(5) of the Act. Accordingly, I approve the Landlord's request for an Order of Possession.

The Landlord claimed unpaid rent of \$550.00 which was due November 1, 2013. The Tenant failed to pay rent in accordance with the tenancy agreement which is a breach of section 26 of the Act. Accordingly, I award the Landlord a Monetary Award for unpaid rent of **\$550.00**.

As noted above this tenancy ended **November 14, 2013**, in accordance with the 10 Day Notice. Therefore I find the Landlord is seeking money for use and occupancy of the unit for December 2013, and January 2014, not rent. The Tenant is still occupying the unit which means the Landlord will not regain possession until after service of the Order

of Possession and they will have to work to find replacement tenants. Therefore, I find the Landlord is entitled to use and occupancy and any loss of rent for the entire months of December 2013 and January 2014, in the amount of **\$1,100.00** (2 x \$550.00).

Upon review of the 1 Month Notice to End Tenancy issued October 28, 2013, I find the Notice to be completed in accordance with the requirements of section 52 of the Act and I find that it was served upon the Tenant in a manner that complies with section 89 of the Act.

The Notice was issued pursuant to Section 47(1) of the Act for the following reasons:

- Tenant or a person permitted on the property by the tenant has:
  - Significantly interfered with or unreasonably disturbed another occupant or the landlord
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

I accept the Landlord's undisputed testimony surrounding the reasons for issuing the 1 Month Notice for cause and I find the Landlord provided sufficient evidence to end this tenancy for cause. As I have granted the Landlord an Order of Possession for unpaid rent there is no need to issue another one.

The Landlord has been successful with their application; therefore I award recovery of the **\$50.00** filing fee

**Monetary Order** – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit plus interest as follows:

Unpaid November 2013 Rent	\$ 550.00
Loss of Rent and Use and Occupancy	1,100.00
Filing Fee	<u>50.00</u>
<b>SUBTOTAL</b>	<b>\$1,700.00</b>
<b>LESS: Security Deposit \$275.00 + Interest 0.00</b>	<b><u>-275.00</u></b>
<b>Offset amount due to the Landlord</b>	<b><u>\$1,425.00</u></b>

### Conclusion

I HEREBY FIND the Landlord is entitled to an Order of Possession effective **Two (2) Days upon service** upon the Tenant. This Order is legally binding and must be served upon the Tenant.

The Landlord has been awarded a Monetary Order in the amount of **\$1,425.00**. This Order is legally binding and must be served upon the Tenant. In the event that the Tenant does not comply with this Order it may be filed with the Province of British Columbia 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: January 07, 2014

---

Residential Tenancy Branch

