



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

Landlord: OPR, MNR, MNDC, FF

Tenant: AAT, AS, CNR, MNDC, MNR, OPT, RR, FF

### **Introduction**

This hearing dealt with cross Applications for Dispute Resolution. The landlord sought an order of possession and a monetary order. The tenant seeks to cancel a notice to end tenancy; to an order to allow access to the rental unit; to allow the tenant to assign or sublet; to a rent a rent reduction; to an order of possession and a monetary order.

The hearing was conducted via teleconference and was attended by the landlord's agent.

The landlord provided document evidence to confirm the tenant was served with the notice of hearing documents and this Application for Dispute Resolution, personally on January 25, 2014 in accordance with Section 89.

Based on the undisputed evidence of the landlord, I find that the tenant has been sufficiently served with the documents pursuant to the *Act*.

In addition, as the tenant had filed an Application of his own that was at least in part seeking to cancel a notice to end tenancy I find the tenant was aware of the hearing.

### **Issue(s) to be Decided**

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent; to a monetary order for unpaid rent; and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 46, 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 allow the tenant access to the rental unit; to allow the tenant to assign and sublet; to a rent reduction; to an order of possession; for compensation for emergency repairs; and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 30, 33, 34, 46, 54, 65, 67, and 72 of the *Act*.

### Background and Evidence

The landlord provided a copy of a tenancy agreement signed by the parties on December 4, 2013 for a 1 year fixed term tenancy beginning on December 4, 2013 for a monthly rent of \$3,200.00 due on the 3<sup>rd</sup> of each month with a security deposit of \$1,600.00 paid.

The landlord submitted that a 10 Day Notice to End Tenancy for Unpaid Rent was issued to the tenant on December 12, 2013 citing the tenant had failed to pay rent in the amount of \$3,200.00 for the month of December 2013. The landlord testified the tenant has failed to pay any amounts of rent since the Notice was issued and confirms the current rental arrears are \$9,600.00.

### Analysis

In the absence of the tenant I dismiss the tenant's Application in its entirety.

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.

Section 46(4) goes on to say that within 5 days of receiving such a notice the tenant may pay the overdue rent, in which case the notice has no effect or dispute the notice by making an application for dispute resolution.

And Section 46(5) states that if a tenant who receives a notice under Section 46 does not pay the rent or file an application for dispute resolution within 5 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.

As I have dismissed the tenant's Application in its entirety I find that the tenants failure to attend the hearing has the same effect as failing to file an Application for Dispute Resolution within 5 days of receiving a 10 Day Notice to End Tenancy for Unpaid Rent and as such I find the tenant is conclusively presumed to have accepted the end of the tenancy.

### Conclusion

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 and grant a monetary order in the amount of **\$9,700.00** comprised of \$9,600.00 rent owed and the \$100.00 fee paid by the landlord for this application.

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: February 04, 2014

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Residential Tenancy Branch

