



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, OPC, MNR, MNDC, CNR, CNC & FF

### Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

The tenancy characterized by considerable acrimony between the landlord and the tenant. Numerous applications have been filed.

### Preliminary Matter:

The tenant requested an adjournment. He testified that his computer crashed and that as a result he was not able to get needed evidence to the Residential Tenancy Branch. The landlord opposed the adjournment. The landlord submitted there has been an ongoing dispute between the parties for an extended time and that the tenant has failed to pay the rent for the last 4 months. The tenant's testimony as to what evidence he intended to produce was vague. However, the tenant failed to establish that the evidence he has been unable to produce was relevant to the tenant's application for an order cancelling the 10 day Notice to End Tenancy and the one month Notice to End Tenancy and landlord's application for an Order for Possession and a monetary order for non-payment of rent.

The Application for Dispute Resolution filed by the Tenant seeks a monetary order in the sum of \$5000. The Application failed to identify sufficient particulars as to what is being claimed. It may be that the tenant's claim in these proceedings may be same as the claim that was dismissed by the arbitrator in a decision dated December 23, 2013 and confirmed on review in a decision dated February 3, 2014 in File #807349. If that is so the tenant's claim is barred by the principle of res judicata. However, I have not received submissions from the parties on that issue. I determined it is appropriate to dismiss the tenant's monetary claim with liberty to re-apply. Liberty to re-apply does not give the tenant the right to make the same claim he has previously made. However, it will be up to the arbitrator assigned to hear the matter to make such a determination.

I find that the 10 day Notice to End Tenancy and the one month Notice to End Tenancy was sufficiently served on the Tenant by posting on January 7, 2014. I find that the tenant's application was sufficiently served by mailing, by registered mail to the agent for the landlord on January 17, 2014. I find that the Application for Dispute Resolution/Notice to Hearing filed by the Landlord was sufficiently served on the Tenant by mailing, by registered mail to where the tenant resides. The tenant testified that he never received it. The Landlord produced a registered mail receipt. A search of the Canada Post tracking service indicates that a Notification card was left with the tenant. The Supreme Court of British Columbia has held that a party cannot avoid service by refusing to pick up their registered mail.

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the Tenant is entitled to an Order cancelling the 10 day Notice to End Tenancy dated January 7, 2014
- b. Whether the Tenant is entitled to an Order cancelling a one month Notice to End Tenancy which is undated and setting the end of tenancy for February 28, 2014?

- c. Whether the Tenant is entitled to a monetary order and if so how much?
- d. Whether the landlord is entitled to an Order for Possession?
- e. Whether the landlord is entitled to A Monetary Order and if so how much?
- f. Whether the landlord is entitled to recover the cost of the filing fee?

### Background and Evidence

The tenancy began on March 15, 2012. The rent is \$450 per month payable on the first day of each month.

On October 31, 2013 in File#811903 the arbitrator issued an Interim Decision severing the tenant's monetary claim as it related to claims made by the tenant in another hearing and ordering that the tenant's application to cancel the 10 day notice be adjourned to December 11, 2013. There was a dispute between the parties as to whether the landlord was refusing to cash the tenant's cheque in an effort to evict the tenant. The arbitrator suggested to the tenant that further payments might be made to the agent for the landlord.

The agent for the landlord testified he received a cheque from the tenant (the November rent cheque) around the middle of November and he forwarded the cheque to the landlord. The landlord testified he has not received the cheque. I determined this is a matter for the landlord, his agent and Canada Post. I find the tenant sufficiently provided the landlord with a cheque for November. The agent for the landlord further testified he has not received any further payments from the Tenant.

The tenant testified he placed a cheque for Decembers rent in the landlord's mailbox around the middle of December. The landlord testified he never received it.

The landlord and the landlord's agent testified they have not received rent for January, February and March. The tenant avoided answering the question of whether he tendered a rent cheque for January, February and March when he was asked. He

disputed the fact that the one month Notice was not dated. He also disputed the fact that the January 7, 2014 10 day notice alleged \$900 months was owed. The tenant further testified that he has not received value for the tenancy because the landlord failed to make repairs as ordered

### Analysis

#### Tenant's Application to Cancel the 10 day Notice to End Tenancy

Section 26(1) of the Residential Tenancy Act provides as follows:

#### **Rules about payment and non-payment of rent**

**26** (1) 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.

There is a dispute between the parties as to whether the tenant tendered payment of the rent for December. The landlord denies receiving a cheque. The tenant testified he put the cheque in the landlord's mailbox and the landlord is creating a fraud by refusing to cash the cheque. I determined it was not necessary to make a determination of whether the rent for December was paid.

I determined the tenant failed to pay the rent for January 2014 and the sum of \$450 is owed in outstanding rent. Even if the tenant's evidence of the payment of rent for December is accepted, the tenant has failed to pay the rent for January 2014. I do not accept the submission of the Tenant that the 10 day Notice is void. The tenant is not relieved of the obligation to pay the amount that is owed even if the amount set out in the Notice is incorrect. As a result I dismissed the tenant's application to cancel the 10 day Notice to End Tenancy. The tenant has also not paid the rent for February and March 2014.

#### Tenant's Application to Cancel the one month Notice to End Tenancy:

The one month Notice to End Tenancy served by the landlord on January 7, 2014 alleges the tenant is repeatedly late paying the rent. The Policy Guidelines provide that 3 late payments constitute repeated late payment. The rent is due on the first of the month. I determine the rent for November was not paid until the middle of November. I determined based on the tenant's evidence that any payment of the rent he may have made was not made until the middle of December. On the basis of the landlord's evidence no payment has been made. I further determined the rent for January has not been paid. I do not accept the submission of the tenant that the failure to date the Notice voids the Notice. The tenant received the Notice as evidenced by his filing an Application for Dispute Resolution seeking an order to have the Notice cancelled. There are three proven late payments. The tenant failed to provide sufficient reason why he has failed to pay the rent on time. I determined the landlord has sufficient grounds to end the tenancy on the basis of repeated late payment of rent.

Tenant's Application for a monetary order:

For the reasons set out earlier in this decision I ordered that the tenant's application for a monetary order be dismissed with liberty to re-apply. It may be that these claims have already been decided in a previous application. However, I determined that it was appropriate for the tenant to be given an opportunity to make submissions on this issue.

Landlord's Application - Order of Possession:

I determined the landlord was entitled to an Order for Possession. There is outstanding rent. The Tenant's application to cancel the 10 day Notice has been dismissed. Similarly, the Tenant's application to cancel the one month Notice to End Tenancy setting the end of tenancy for February 28, 2014 has been dismissed. **Accordingly, I granted the landlord an Order for Possession on 2 days notice.**

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

Analysis - Monetary Order and Cost of Filing fee

I determined the tenant has failed to pay the rent for the month(s) of January and February and the sum of \$900 is owed. There is a dispute as to whether the rent for December has been paid. I dismissed this claim with liberty to re-apply.

The Application for Dispute Resolution does not identify a claim for loss of revenue for March. In any event this claim is premature as it is possible the landlord will re-rent the rental unit and not suffer a loss for the entire month. The landlord retains the right to make a claim for loss of rent or loss of rental income for March 2014. **I granted the landlord a monetary order in the sum of \$900 plus the sum of \$50 in respect of the filing fee for a total of \$950.**

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial 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.

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Dated: March 03, 2014

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Residential Tenancy Branch

