



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR RP FF

### Preliminary Issues

Residential Tenancy Rules of Procedure, Rule 2.3 states that, in the course of the dispute resolution proceeding, if the arbitrator determines that it is appropriate to do so, he or she may dismiss the unrelated disputes contained in a single application with or without leave to reapply.

Upon review of the Tenant's application I have determined that I will not deal with all the dispute issues the Tenant has placed on their application. For disputes to be combined on an application they must be related. Not all the claims on this application are sufficiently related to the main issue relating to the Notice to end tenancy. Therefore, I will deal with the Tenant's request to set aside or cancel the Landlord's Notice to End Tenancy issued for unpaid rent; and I dismiss the balance of the Tenant's claim with leave to re-apply.

### Introduction

This hearing dealt with an Application for Dispute Resolution filed on January 31, 2014, by the Tenant to cancel a 10 Day Notice issued for unpaid rent and to recover the cost of the filing fee from the Landlord for this application.

The Tenant provided affirmed testimony which indicates he personally served the Landlord with copies of his application for dispute resolution and Notice of dispute resolution hearing, on Monday February 3, 2014, in the presence of a witness. Based on the submissions of the Tenant I find the Landlord was sufficiently served notice of this proceeding, in accordance with section 89 of the Act, and I proceeded in absence of the Landlord.

Issue(s) to be Decided

- 1) What are the terms of the Tenant's tenancy agreement?
- 2) Should the 10 Day Notice to end tenancy for unpaid rent issued January 16, 2014, be cancelled?

Background and Evidence

The Tenant testified that in mid October 2013 the Landlord entered into verbal tenancy agreements with six different tenants. They were allowed to occupy the unit rent free in October if they agreed to clean up the place. They were required to start paying rent as of November 1, 2013.

The Tenant stated that the house consisted of 4 separate locked bedrooms and the tenants shared a common living room, kitchen, and bathroom. The Tenant argued that the Landlord collected rent from each tenant and even had some of the tenant's have their income assistance payments paid directly to the Landlord.

The Tenant submitted that the rent for his room was \$300.00 per month and no security deposit was requested to be paid by him. He paid his rent in cash directly to the Landlord and has received some receipts. He said the Landlord told them that the utilities had to be in one of the tenant's names and that they had to figure out the payment for utilities by themselves. The Tenant had the utilities put in his name and has been collecting the payments from the other tenants.

The Tenant submitted that on January 26, 2014 he found the 10 Day Notice that had been slipped under his bedroom door and was dated January 16, 2014. He said that he did not understand why the Notice showed an amount of \$1,900.00 for unpaid rent as he has always paid his \$300.00 rent payment. He said he did not know why the notice showed an amount for unpaid utilities so he filed an application to have the Notice cancelled.

In closing, the Tenant stated that the Landlord kicked down a door and threatened his wife. He asked if this was a police matter even though it involved his Landlord. I explained to the Tenant that the Residential Tenancy Branch deals with issues pertaining to occupation under a tenancy agreement and the *Residential Tenancy Act* but threats to a person were a civil matter.

### Analysis

Given the evidence before me, in the absence of any evidence from the Landlord who did not appear despite being properly served with notice of this proceeding, I accepted the undisputed version of events as discussed by the Tenant.

The *Residential Tenancy Act* defines a “**tenancy agreement**” as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

Section 91 of the Act stipulates that except as modified or varied under this Act, the common law respecting landlords and tenants applies in British Columbia.

Common law has established that oral contracts and/or agreements are enforceable. Therefore, based on the above, I find that the terms of this verbal tenancy agreement are recognized and enforceable under the *Residential Tenancy Act*.

The *Residential Tenancy Policy Guideline # 13* defines "Tenants in common" as tenants sharing the same premises or portion of premises who have entered into separate tenancy agreements with a landlord. A tenant in common has the same rights and obligations as an ordinary tenant with a separate tenancy, and is not responsible for debts or damages relating to the other tenancy.

Based on the above and in the absence of any evidence to the contrary, I find the tenants of this rental property were “Tenants in common” and the applicant to this dispute entered into a verbal tenancy agreement to rent a bedroom and share common areas and required he pay rent on the first of each month in the amount of \$300.00.

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. If the Notice is disputed the burden of proof to uphold the Notice lies with the Landlord.

In this case the Tenant filed his application to dispute the Notice within the required time frame. In the absence of evidence from the Landlord to defend the 10 Day Notice, I hereby grant the Tenant’s application to cancel the 10 Day Notice issued January 16, 2014.

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

Conclusion

The 10 Day Notice to end tenancy issued for unpaid rent on January 16, 2014, is HEREBY CANCELLED and is of no force or effect.

The Tenant may deduct the one time award of the **\$50.00** filing fee from his next rent payment.

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: March 25, 2014

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Residential Tenancy Branch

