



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Camargue Inv.  
and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes:**

Tenant's application: CNR; FF

Landlords' application: OPR; MNR

### **Preliminary Matters**

The Tenant filed his application on January 20, 2014. At the time of filing his application, he sought to cancel a Notice to End Tenancy for Unpaid Rent issued January 13, 2014. The Tenant provided a copy of an additional Notice to End Tenancy for Unpaid Rent issued February 3, 2014, in his evidence package. The parties agreed that the Tenant's intent was to cancel both Notices to End the Tenancy.

The Landlords filed their application on February 14, 2014, seeking an Order of Possession. On February 26, 2014, the Landlords provided the Residential Tenancy Branch and the Tenant with an amended application adding a request for a monetary award for unpaid rent.

Therefore, I amended both applications to reflect that the Tenant seeks to cancel both Notices and the Landlords seek a Monetary Order.

### **Introduction**

This Hearing was convened to consider cross applications. The Tenant seeks to cancel two Notices to End Tenancy for Unpaid Rent issued January 13, 2014, and February 3, 2014; and to recover the cost of the filing fee from the Landlords.

The Landlords seek an Order of Possession and a Monetary Order for unpaid rent.

The parties gave affirmed testimony at the Hearing.

It was determined that the parties served each other with their respective Notice of Hearing documents and copies of all of their documentary evidence.

**Issues to be Decided**

- Should the Notices be cancelled?
- Are the Landlords entitled to an Order of Possession and Monetary Order for unpaid rent?

**Background and Evidence**

The parties agreed on the following facts:

- This tenancy began on August 1, 2009. Monthly rent at the beginning of the tenancy was \$650.00. Rent is due on the first day of each month. The Tenant paid a security deposit in the amount of \$325.00 on July 27, 2009.
- The Landlord's agents served the Tenant with the Notices on the dates they were issued by handing the Notices to the Tenant at the rental unit.

The Landlord's agent JE gave the following testimony:

JE testified that the Landlord's agents were hired in May, 2013, to manage the rental property. She stated that the Tenant advised them that he didn't have to pay for parking his boats at the rental unit in exchange for lending his pressure washer to the former manager. JE testified that parking fees were \$30.00 per month.

JE testified that current rent is \$675.00. She said that the Tenant advised her that he had an agreement with the former manager that he would pay only \$625.00 for rent, but there is no record of that agreement with the Landlord. The Landlord's documentary evidence indicates that the Landlord seeks a monetary award, calculated as follows:

Accumulated monthly arrears (parking fees)	\$300.00
Recovery of filing fee	\$50.00
Unpaid rent for February and late fee	\$695.00
Loss of revenue for March and late fee	<u>\$695.00</u>
TOTAL CLAIM	\$1,740.00

The Landlord provided a reconciliation of the amounts the Landlord alleges the Tenant owes to and including February 1, 2014.

JE stated that the Landlord advised her that it would waive the parking fees, but wants to recover the unpaid rent and late fees. She stated that she hoped the parties could come to a settlement agreement and that the Tenant would stay, because he was a good tenant.

The Tenant gave the following testimony:

The Tenant stated that he would have been interested in staying, but not since the Landlord demanded that he remove his boats or face having them towed at his expense. The Tenant stated that he had to pay \$250.00 to have his boats moved. The Tenant stated that the former building manager had the Tenant's pressure washer for 4 ½ months and that they agreed that he would not have to pay parking fees for his boats in consideration for the use of the Tenant's pressure washer.

The Tenant stated that he has found another place to live and that he has told the Landlord's agents that he will be moving as soon as possible. The Tenant has not yet provided his notice to end the tenancy in writing.

The Tenant testified that the elevator did not work intermittently throughout the tenancy and that he told the former building manager that he was going to find another place to live. The Tenant stated that they agreed that he would pay a reduced rent of \$625.00 to compensate him for loss of use of the elevator and therefore he decided to stay. The Tenant stated that he gave the Landlord post dated cheques for a year in the amount of \$625.00 and that the Landlord cashed one of them.

The Tenant stated that he did not pay any rent for February and March, 2014, because he was advised by an Information Officer at the Residential Tenancy Branch and by his lawyer to wait until after the Hearing.

The Tenant provided copies of bank statements indicating the rent payments that he made to the Landlord.

**Analysis**

I explained to the Tenant that Section 26 of the Act requires a tenant to pay rent when it is due, unless the Tenant has a right under the Act to deduct all or a portion of the rent. In this circumstance, the Tenant had no such right.

I find that there is no provision in the tenancy agreement for payment of parking fees. Therefore, **I dismiss the Landlord's claim for unpaid parking fees.**

It is important to note that the Landlord's evidence with respect to the outstanding rent is inconsistent. For example:

- The Landlord's written submission indicates that the Landlord is seeking "unpaid rent and late fees" for February, 2014, in the total amount of \$695.00.
- The tenancy agreement indicates that late fees are \$25.00. The Landlord's agents indicated that monthly rent is \$675.00, which when added to the late fee equals \$700.00.
- The Landlord's reconciliation that was provided in evidence indicates charges of \$680.00 per month for "rent charge" from January 1, 2013 to February 1, 2014.
- The Notice to End Tenancy dated February 3, 2014, indicates that rent in the amount of \$675.00 is owed.
- The Notice to End Tenancy dated January 13, 2014, indicates that rent in the amount of \$752.50 is owed.
- The Landlord appears to have included \$30.00 a month for parking fees in with rent owed in some circumstances, but not all circumstances. Parking fees are not "rent".
- JE stated that rent increased in 2011 and 2012; however, the Landlord did not provide any copies of the Notice of Rent Increase for 2011 or 2012.

For the reasons set out above, I find that the Landlord has not established the amount of rent that is owed. However, the Tenant agreed he owes rent in the amount of \$625.00 for the month of February, 2014. Therefore, I find that the Landlord is entitled to unpaid rent and late fees in the total amount of **\$650.00** for the month of February, 2014, which is the amount that the Tenant agrees he owes. **I make no finding with respect to the amount of the monthly rent. The Landlord is at liberty to serve the Tenant with another Notice to End Tenancy for Unpaid Rent for the month of March, 2014, if it so chooses.**

I find that the Notices to End Tenancy are not valid notices because of the confusion with respect to how much rent was owed. Therefore, **I grant the Tenant's application to cancel the Notices. The tenancy will continue until it is ended in accordance with the provisions of the Act. The Tenant is cautioned to refer to the provisions of Section 45 and 52 of the Act with respect to giving due notice to the Landlord to end the tenancy.**

Both parties' applications had merit and I make no order with respect to recovery of the filing fee for the Tenant.

**Conclusion**

**I grant the Tenant's application to cancel the Notices. The tenancy will continue until it is ended in accordance with the provisions of the Act. The Tenant is cautioned to refer to the provisions of Section 45 and 52 of the Act with respect to giving due notice to the Landlord to end the tenancy.**

**I make no finding with respect to the amount of the monthly rent.**

I hereby provide the Landlord with a Monetary Order in the amount of **\$650.00** for service upon the Tenant. This Order may be filed in the Provincial Court (Small Claims) 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: March 06, 2014

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Residential Tenancy Branch

