



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** *CNR, MT, MNDC, AS*

### **Introduction**

This hearing dealt with an application by the tenant for an order to set aside a notice to end tenancy for nonpayment of rent and for more time to do so. The tenant also applied for a monetary order for loss under the *Act* and for an order allowing her to sublet the rental unit. Both parties attended the hearing and had opportunity to be heard.

### **Issue to be Decided**

Does the landlord have grounds to end this tenancy? Is the tenant entitled to a monetary order?

### **Background and Evidence**

The parties were in a common law relationship for approximately 20 months between 2003 and 2006. They have a son born in September 2004. The parties were involved in a dispute that was heard in the Supreme Court of British Columbia in May 2013. The dispute involved a house purchased by the landlord in April 2007 to which the tenant was claiming sole title. The tenant also argued that she had made an agreement with the landlord that she would be entitled to occupy the property rent free in lieu of child support.

In a decision dated January 15, 2014, the judge ruled that the tenant has no interest in the rental unit and that there was no agreement regarding the terms or duration of the tenant's right to occupy the rental unit or the tenant's ability to sublet.

On February 24, 2013, the parties entered into a tenancy agreement. Neither party filed a copy of the agreement but both parties agreed that the rent was fixed at \$570.00 per month payable on the first of each month. The tenant paid rent until September 2013.

On January 12, 2014, the landlord served the tenant with a ten day notice to end tenancy for nonpayment of rent for 5 months in the amount of \$2,280.00. Again, neither party filed a copy of the notice to end tenancy but the tenant agreed that she received it on January 24, 2014 and was informed that she had five days to dispute it or pay rent.

The tenant filed an application to dispute it on January 30, 2014 which is a day late. The tenant stated the reason for not filing in time was that her lawyer told her that the tenancy agreement was not valid. The tenant stated that she used to sub let to foreign students but the landlord jeopardized this arrangement and caused her to lose \$12,605.00 in rental income. The tenant is claiming this amount as compensation.

### **Analysis:**

Based on the sworn testimony of the both parties, I find that the parties entered into a tenancy agreement in February 2013. The tenant stopped paying rent in September 2013 and was served a notice to end tenancy for unpaid rent, on January 24, 2014. The tenant did not file an application to dispute the notice to end tenancy and did not pay rent within five days of receiving the notice to end tenancy. Accordingly, I uphold the notice to end tenancy.

During the hearing, the landlord made a request under section 55 of the legislation for an order of possession effective May 01, 2014. Under the provisions of section 55(1), upon the request of a landlord, I must issue an order of possession when I have upheld a notice to end tenancy. Accordingly, I so order. The tenant must be served with the order of possession. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

The tenant has failed to prove that the landlord caused her to lose rental income in the amount of \$12,605.00 and therefore this portion of her claim is dismissed. Since the tenancy is ending, the tenant's request to be allowed to sublet is also dismissed.

The landlord is at liberty to file his own application for a monetary order for unpaid rent for the months of September 2013 to March 2014.

### **Conclusion**

I grant the landlord an order of possession effective May 01, 2014

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 18, 2014

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Residential Tenancy Branch