



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 394438 BC Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes

For the tenant: CNR

For the landlord: OPR, MNR, MNDC, FF

### Introduction

This hearing was convened as the result of the cross applications of the parties for dispute resolution seeking remedy under the Residential Tenancy Act (the “Act”).

The tenant applied for an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”).

The landlord applied for an order of possession for the rental unit due to unpaid rent, a monetary order for money owed or compensation for damage or loss and unpaid rent, and for recovery of the filing fee.

At the beginning of the hearing, neither party raised any issue regarding the service of the other’s application or evidence.

The tenant, his translator/agent, and the landlord attended the hearing; the hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter all parties were provided the opportunity to present their evidence orally, refer to documentary evidence submitted prior to the hearing, respond to the other’s evidence, and make submissions to me.

I have reviewed the oral and written evidence of the parties before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

### Issue(s) to be Decided

Is the tenant entitled to an order cancelling the Notice?

Is the landlord entitled to an order of possession for the rental unit due to unpaid rent, monetary compensation, and to recover the filing fee?

### Background and Evidence

The tenancy agreement submitted by the landlord shows that this tenancy began on October 15, 2008, and monthly rent is \$750.

Pursuant to the Rules of Procedure, the landlord proceeded first in the hearing to explain or support the Notice to End Tenancy.

**Landlord's application-**

The landlord stated that the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities on March 21, 2014, leaving it with the tenant, listing unpaid rent of \$750 and \$30 in unpaid utilities as of March 1, 2014. The effective move-out date listed was March 26, 2014. The tenant acknowledged receiving the Notice on March 21, 2014.

The landlord acknowledged that the additional \$30 listed on the Notice was for parking and not for unpaid utilities.

A 10 Day Notice to end the tenancy is not effective earlier than 10 days after it is served upon a tenant. Section 53 of the Act allows the effective date of a Notice to be changed to the earliest date upon which the Notice complies with the Act; therefore, I find that the Notice effective date is changed to March 31, 2014.

The landlord asserted that since the issuance of the Notice, no rent payments have been received from the tenant and that he now owes rent for March, April and May, as well as \$30 in parking for March, April, and May.

*Tenant's response-*

The tenant claimed that the landlord backdated the Notice, as it was dated March 16, 2014, but served on March 21, 2014.

The tenant confirmed not paying rent for March, April, and May due to banking issues.

**Analysis**

**Landlord's Application:**

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so.

Where a tenant fails to pay rent when due, the landlord may serve the tenant with a 10 Day Notice for Unpaid Rent, pursuant to section 46 of the Act. Upon receipt of the 10 Day Notice, the tenant must pay the outstanding rent or dispute the Notice within five days. In this case, I find that the tenant disputed the Notice within business five days;

however, when a Notice is disputed, the tenant must be able to demonstrate that they did not owe the landlord rent or had some other legal right to withhold rent.

In the case before me, I find the landlord submitted sufficient oral and documentary evidence that the tenant owed the landlord rent when the Notice was issued and that he did not pay any of the rent owed to the landlord within five days of receiving the Notice.

Therefore, I find the tenancy has ended due to the tenant's failure to pay rent and the landlord is entitled to regain possession of the rental unit.

I find that the landlord is entitled to and I therefore grant an order of possession for the rental unit effective 2 days after service upon the tenant.

I find the landlord submitted sufficient evidence that the tenant owes the amount of \$2250 for unpaid rent through May 2014. I allow the landlord's claim for unpaid rent for March, April, and May, although the date of the hearing was on May 9. I have determined that the landlord is entitled to unpaid rent for May as the tenant owed rent on May 1, and the landlord is unlikely to be able to re-rent the rental unit for any balance of May.

I therefore find that the landlord is entitled to a monetary award in the amount of \$2300, comprised of outstanding rent through May 2014, in the amount of \$2250, and the \$50 filing fee paid by the landlord for this application.

I have not awarded the landlord for unpaid parking of \$90, as I was unable to determine from the tenancy agreement that the tenant owed parking of \$30 per month.

### **Tenant's application:**

Due to the above, the tenant's application for dispute resolution seeking a cancellation of the Notice is dismissed without leave to reapply as I find the 10 Day Notice to End Tenancy issued by the landlord has been supported by the landlord and is therefore valid and enforceable.

### **Conclusion**

The tenant's application is dismissed.

The landlord's application has been granted.

I grant the landlord a final, legally binding order of possession for the rental unit, which is enclosed with the landlord's Decision. Should the tenant fail to vacate the rental unit pursuant to the terms of the order after it has been served upon him, this order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court. The tenant is advised that costs of such enforcement are recoverable from the tenant.

I grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the amount of \$2300, which I have enclosed with the landlord's Decision.

Should the tenant fail to pay the landlord this amount without delay after the order has been served upon him, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an order of that Court. The tenant is advised that costs of such enforcement are recoverable from the tenant.

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: May 9, 2014

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Residential Tenancy Branch

