



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CAPITAL J. MANAGEMENT LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes

For the landlord: OPC MNDC FF O  
For the respondent occupant: CNC FF

### Introduction

This hearing was convened as a result of the cross applications of the landlord and the respondent occupant for dispute resolution under the *Residential Tenancy Act* (the “Act”).

The landlord applied for an order of possession based on the tenant’s notice to vacate, for a monetary order unpaid rent or utilities, for authorization to keep all or part of the security deposit, and to recover the filing fee.

The respondent occupant applied to cancel a 1 Month Notice to End Tenancy for Unpaid Rent or Utilities (the “1 Month Notice”), and to recover the filing fee.

Two agents for the landlord (the “agents”), a witness for the landlord, tenant “RS”, and the respondent occupant, “RMS” (the “respondent occupant”) attended the teleconference hearing. The hearing process was explained to the participants and an opportunity to ask questions about the hearing process was provided to the participants.

### Preliminary and Procedural Matters

Tenant “RS” testified under oath that the respondent occupant was a roommate and not a tenant. Respondent occupant “RMS” confirmed that he paid rent to “RS” and was not a tenant listed on the tenancy agreement, which is supported by the tenancy agreement submitted in evidence. As a result, I find respondent occupant “RMS” is not a tenant, and has no standing at the hearing to dispute the 1 Month Notice dated March 18, 2014. “RMS” is an occupant and failed to vacate the rental unit when the tenant vacated the

rental unit on April 30, 2014 in accordance with the effective vacancy date listed on the 1 Month Notice dated March 18, 2014.

Given the above, the application of the respondent occupant was dismissed as the respondent occupant is an occupant and not a tenant and has no standing at this proceeding.

The landlord's application was amended pursuant to section 64(3) of the *Act* to include a request for an order of possession based on an undisputed 1 Month Notice, as I find the landlord's wording of their application supported the amendment.

#### Issues to be Decided

- Is the landlord entitled to an order of possession under the *Act*?
- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?

#### Background and Evidence

A tenancy agreement was submitted in evidence which supports that a periodic, month to month tenancy with tenant "RS" began on July 1, 2008. Tenant "RS" and the agents confirmed that tenant "RS" vacated on April 30, 2014 in accordance with an undisputed 1 Month Notice dated March 18, 2014 and received by the tenant on the same date. Tenant "RS" confirmed that she did not dispute the 1 Month Notice.

The agents and the respondent occupant confirmed that the respondent occupant remains in the rental unit. The respondent occupant stated that rent for May 2014 has not been paid, and the agents stated that "RS" did not pay rent for May 2014, so they are seeking \$800.00 in loss of rent for the month of May 2014, as the tenant's occupant failed to vacate the rental unit when the tenant did on April 30, 2014 and remains occupying the rental unit.

#### Analysis

Based on the testimony, the documentary evidence before me, and on the balance of probabilities, I find the following.

**Order of possession** – Tenant "RS" testified under oath that the respondent occupant was a roommate and not a tenant. The respondent occupant confirmed that he was not a tenant listed on the tenancy agreement. The tenant "RS" also confirmed that she was

served with a 1 Month Notice dated March 18, 2014 and did not dispute the 1 Month Notice. Pursuant to section 47(5) of the *Act*, I find that the tenant is conclusively presumed to have accepted that the tenancy ended on the effective vacancy date listed on the 1 Month Notice, which was April 30, 2014. Therefore, as that effective vacancy date has already passed, **I grant** the landlord an order of possession effective **two (2) days after service**, which includes all occupants, as the respondent occupant remains in the rental unit. Once the respondent occupant has been served, should the respondent occupant fail to comply with the order of possession, the order of possession may be filed in the Supreme Court of British Columbia and enforced as an order of that court.

*Test for damages or loss*

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

**Claim for loss of rent for May 2014** – Based on the undisputed testimony of the agents, I find that the tenant failed to provide vacant possession of the rental unit to the landlord as her occupant remains in the rental unit. As the respondent occupant remains in the rental unit, I find the landlord has met the burden of proof to support their loss of rent for the month of May 2014 in the amount of \$800.00. Therefore, **I grant** the landlord **\$800.00** in compensation for loss of May 2014 due to the tenant's occupant failing to vacate the rental unit on April 30, 2014.

The landlord continues to hold the tenant's security deposit of \$400.00 which has accrued \$3.02 in interest since the start of the tenancy on July 1, 2008. As the landlord's claim had merit, **I grant** the landlord the recovery of the **\$50.00** filing fee.

The landlord has established as total monetary claim of \$850.00, comprised of \$800.00 for the loss of May 2014 rent, plus the recovery of the \$50.00 filing fee.

I find this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenant's security deposit which the landlord continues to hold in the amount of \$400.00 which has accrued \$3.02 in interest since the start of the tenancy on July 1, 2008. **I ORDER** the landlord to retain the tenant's full security deposit of \$403.02 in partial satisfaction of the landlord's monetary claim, and I grant the landlord a monetary order pursuant to section 67 of the *Act* for the balance owing to the landlord by the tenant in the amount of **\$446.98**. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

As the application of respondent occupant was dismissed, I do not grant the respondent occupant the recovery of his filing fee.

### Conclusion

The application of respondent occupant was dismissed.

The landlord has been granted an order of possession effective two (2) days after service on the respondent occupant and includes all occupants as the tenant already vacated the rental unit on April 30, 2014. This order may be filed in the Supreme Court of British Columbia and enforced as an order of that court.

The landlord has established a total monetary claim of \$850.00 and has been ordered to retain the tenant's full security deposit of \$403.02 including interest in partial satisfaction of the landlord's monetary claim. The landlord has been granted a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenant to the landlord in the amount of \$446.98. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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 14, 2014

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Residential Tenancy Branch

