# **Dispute Resolution Services**

Residential Tenancy Branch Office of Housing and Construction Standards

## DECISION

Dispute Codes CNR MT MNDC OLC OPT

## Introduction

This hearing dealt with the applicant's Application for Dispute Resolution under the *Residential Tenancy Act* (the *"Act"*), seeking more time to apply to cancel a 10 day Notice to End Tenancy for unpaid rent or utilities (the "10 Day Notice"), to cancel a 10 Day Notice, for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, for an order directing the landlord to comply with the *Act*, and to obtain an order of possession of the rental unit.

The applicant "CC", and landlord attended the teleconference hearing. The hearing process was explained to the parties, the parties were affirmed, and an opportunity to ask questions was provided to the parties at the start of the hearing.

### Background and Evidence

The applicant claimed that the respondent landlord was her landlord, which the landlord denied under oath. The landlord testified that she did not have a tenancy agreement with the applicants and that the tenant, "JN" had sublet to the applicants without the permission of the landlord. The landlord stated that she was granted an order of possession and a monetary order dated April 17, 2014, against tenant "JN" which was submitted in evidence.

The applicant submitted a copy of a "Shelter Information" form which lists the tenant "JN" and the landlord, however, only the tenant "JN" signed the document. The applicant testified that the "Shelter Information" form was their evidence of a tenancy agreement. The applicant stated that she had no receipts to submit in evidence, and then later changed her testimony at the end of the hearing by asking for permission to submit receipts, which was denied as the hearing had already commenced and the deadline for submitting evidence had already passed.

The applicant claimed that she paid the landlord rent directly, which the landlord denied under oath. The landlord testified that tenant "JN" paid her directly and that she never received any money from applicants directly. The landlord made a request for an order of possession.

## <u>Analysis</u>

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Firstly, I find that a "Shelter Information" form does not constitute a tenancy agreement, as claimed by applicant "CC". Furthermore, that form is not signed by the landlord, and is signed by the tenant "JN".

Secondly, I find the applicant not to be credible as she originally testified under oath that she had no receipts to submit in evidence, and then later in the hearing, requested permission to submit copies of receipts which is inconsistent with her original testimony. Therefore, I accept the testimony of the landlord that the landlord did not have a tenancy agreement with the occupants and that the original tenant "JN" had sublet to occupants "CC" and "JB" without the permission of the landlord.

**10 Day Notice** – The applicants failed to provide a copy of the 10 Day Notice that the applicants had applied to have cancelled. Therefore, **I dismiss** the applicant's application to cancel the 10 Day Notice without leave to reapply.

Once I dismissed the applicant's application to cancel the 10 Day Notice, and pursuant to section 55 of the *Act*, I must grant the landlord an order of possession once requested after I have dismissed an application to dispute the 10 Day Notice. Therefore, I grant the landlord an order of possession effective two (2) days after service. I note that the landlord has already been granted an order of possession against tenant "JN" based on a previous decision, file number 252328, however, out of an abundance of caution, I have granted a second order of possession as the I find the applicants are occupants, and the original order of possession did not include "all occupants". Given the above, I have added the name of the tenant "JN" and the applicants "CC" and "JB" to the order of possession and have included any other occupants.

**Monetary claim** – As the applicants failed to provide a monetary breakdown of their claim for \$25,000.00, or any supporting documentary evidence, **I dismiss** their monetary claim in full, **without leave to reapply.** 

**Remainder of application - I dismiss** the remainder of the tenant's application as it is moot given that an order of possession has been granted and that the applicants are occupants and not tenants under the *Act*.

#### **Conclusion**

The applicants' application to cancel the 10 Day Notice is dismissed without leave to reapply.

The landlord has been granted an order of possession effective two (2) days after service. Should the landlord require enforcement of this order of possession, this order must be served and may be enforced in the Supreme Court of British Columbia.

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 9, 2014