



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Transpacific Realty Advisors  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR, FF  
MT, CNR, OLC, PSF, O

### Introduction

This hearing was convened by way of conference call concerning applications made by the landlord and by the tenant. The landlord has applied for an Order of Possession and a monetary order for unpaid rent or utilities and to recover the filing fee from the tenant for the cost of the application. The tenant has applied for more time than permitted by the *Act* to dispute a notice to end tenancy; for an order cancelling a notice to end tenancy for unpaid rent or utilities; for an order that the landlord comply with the *Act*, regulation, or tenancy agreement; and for an order that the landlord provide services or facilities required by law.

An agent for the landlord company and the tenant attended, and the landlord's agent called one witness. The parties and the witness each gave affirmed testimony, and the parties were given the opportunity to cross examine each other and the witness on the evidentiary material and testimony provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

### Issue(s) to be Decided

- Is the landlord entitled under the *Residential Tenancy Act* to an Order of Possession for unpaid rent?
- Has the landlord established a monetary claim for unpaid rent?
- Should the tenant be granted more time than permitted by the *Act* to dispute a notice to end tenancy?
- Should the notice to end tenancy for unpaid rent or utilities be cancelled?
- Has the tenant established that the landlord should be ordered to comply with the *Act*, regulation, or tenancy agreement?

- Has the tenant established that the landlord should be ordered to provide services or facilities required by law?

### Background and Evidence

The landlord testified that this fixed term tenancy began on April 1, 2008, expired on March 31, 2009 and then reverted to a month-to-month tenancy, and the tenant still resides in the rental unit. Rent in the amount of \$837.00 per month is payable in advance on the 1<sup>st</sup> day of each month, which was increased to \$855.00 per month effective July 1, 2014. Copies of the tenancy agreement and Notice of Rent Increase have been provided. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$375.00 which is still held in trust by the landlord.

The landlord also testified that there have been 2 previous hearings with respect to this tenancy wherein the tenant had applied for the same relief. Copies of the Decisions have been provided, and the first is dated April 4, 2012 and the second is dated March 18, 2014. The first shows that the tenant had applied for numerous items of relief, including a request for an order that the landlord provide services or facilities required by law, and a request for an order that the landlord comply with the *Act*, regulation or tenancy agreement. The second application of the tenant also requests the same relief and the landlord's agent testified that this application is respecting the same leak and both applications were dismissed without leave to reapply.

The landlord's agent also testified that the tenant fell into arrears of rent, and the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, a copy of which has been provided. The notice is dated June 3, 2014 and contains an expected date of vacancy of June 18, 2014. The landlord's agent testified that the notice was posted to the door of the rental unit on June 3, 2014 and a copy was sent to the tenant by registered mail on June 4, 2014, however the tenant did not pick up the registered mail. The notice states that the tenant failed to pay rent in the amount of \$837.00 that was due on June 1, 2014. The landlord's agent testified that the same issues with respect to rent and the tenant's applications happen over and over.

The landlord requests a monetary order for unpaid rent in the amount of \$837.00 for June and \$855.00 for July, 2014 as well as an Order of Possession. The landlord's agent stated that the landlord is content with an Order of Possession effective August 31, 2014.

The landlord's witness testified that she prepared the notice to end tenancy and submitted it for mailing by registered mail on June 4, 2014. The copy served by posting to the door of the rental unit was done by maintenance personnel of the landlord company.

The tenant testified that he has suffered a set-back on rental payments due to medical issues. The tenant had spoken to the landlord's agent about that who was not sympathetic and stated that it wasn't her problem.

The tenant also testified that there has been a successive pattern of mis-management within the rental complex. As a result, the bathroom is non-functioning and not attended to; the tenant suffers disruptions from excavation noise; change in property managers has caused confusion; the kitchen sink wouldn't drain and the landlords wouldn't fix it but finally a maintenance person did and then was dismissed by the landlord; the fridge didn't work; locks don't work; and the tenant has learned that cameras for security of the building are not operable but are for fooling folks that they are operational.

The tenant further testified that this application is not related to the previous hearings. The unit is functioning well now, but repairs have been made by the tenant, causing loss of income. The tenant was not clear on what loss has occurred or why but also testified that he continued to work.

The tenant continued to speak in very general terms about the tenancy but had absolutely no specifics with respect to the claim for a monetary order, or for an order that the landlords comply with the *Act*, regulation or tenancy agreement; or for an order that the landlord provide services or facilities required by law. A lot of patience and time was expended to the tenant who specified that he was being very meticulous to ensure his points were made clear and that he was articulating himself correctly. The tenant also stated that he would like a payment plan for paying the rental arrears.

### Analysis

The *Residential Tenancy Act* states that once a tenant is served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, the tenant has 5 days to dispute the notice or pay the rent in full. If the tenant does neither, the tenant is conclusively presumed to have accepted the end of the tenancy and must move out of the rental unit.

In this case, the tenant has disputed the notice to end tenancy, but not within the 5 days provided by the *Act*, and has applied for more time to dispute the notice. However, the tenant has not satisfied me that the tenant has a valid reason for disputing the notice but testified that he ran into a financial set-back due to medical reasons. I accept that

as a reason for extending the time for the tenant to dispute the notice to end tenancy, but I do not accept that as a defense to not paying rent. The *Act* requires a tenant to pay rent when it is due, and the landlord is entitled to issue a notice to end tenancy if rent is not paid. I find that the landlord is entitled under the *Act* to an Order of Possession. The landlord's agent has consented to the order becoming effective on August 31, 2014 and I so order.

I further accept the testimony of the landlord's agent that the tenant owes rent for the months of June and July, 2014 in the amount of \$1,692.00. Since the landlord has been successful with the application the landlord is entitled to recovery of the \$50.00 filing fee. I decline to grant a monetary order for rent for the month of August, 2014 at this time, and leave it to the parties to comply with the *Act* as it relates to rent for that month and to the security deposit.

With respect to the balance of the tenant's application, I find that the relief he seeks has already been heard and decided, and I dismiss the tenant's application without leave to reapply.

### Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord effective August 31, 2014 at 1:00 p.m.

I further grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,742.00.

The tenant's application is hereby dismissed in its entirety without leave to reapply.

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: July 31, 2014

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Residential Tenancy Branch

