



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Metro Vancouver Housing Corporation  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      DRI, CNR, OPR, MNR, MNDC, FF

### Introduction

This hearing dealt with two related files. One was the tenant's application for orders setting aside a 10 Day Notice to End Tenancy for Non-Payment of Rent and setting aside a rent increase. The other was the landlord's application for an order of possession and a monetary order. Both parties appeared and had an opportunity to be heard. As the parties and circumstances are the same on both applications, one decision will be rendered for both.

### Issue(s) to be Decided

- Does the change in the rent charged as of May 1, 2014 an illegal rent increase?
- Is the 10 Day Notice to End Tenancy for Non-Payment of Rent dated June 5, 2014 valid?
- Is the landlord entitled to an order of possession and, if so, on what terms?
- Is the landlord entitled to a monetary order and, if so, in what amount?

### Background and Evidence

This month-to-month tenancy commenced January 1, 2010. The market rent for the unit at that time was \$860.00. The tenant paid a security deposit of \$430.00.

The tenant received a rent subsidy which reduced the actual payment he was required to make. He was also provided with a two bedroom unit because his two daughters were living with him. This is laid out very clearly in the tenancy agreement which states:

"8. Income and Occupancy Verification

- (a) The tenant must provide the landlord with an Income Verification a minimum of once a year on request from the landlord and as soon as practicable when there is a change in either:
  - i. the annual income of the Tenant and any Occupants over the age of 18; or
  - ii. the composition of the household.

(b) The Rental Unit is a subsidized rental unit as defined in the Act and the tenant, or other proposed occupant, was required to demonstrate that he or she met eligibility criteria related to:

- i. income;
- ii. number of occupants;
- iii. health; and/or
- iv. other similar criteria

before entering into this Agreement for the Rental Unit.”

In paragraph 11 of the tenancy agreement the tenant agrees that the rental unit will be occupied only by him and his two daughters.

In a letter dated December 11, 2013, the landlord asked the tenant to provide updated income information because it had been reported to them that the tenant’s two daughters were no longer residing with him. After requesting specific information the letter advised that:

“If your rent is paid by direct deposit, please be aware that the results of this review will be automatically applied to the amount of rent deducted from your account.

If this information is not received by the stated deadline, your rental assistance will be removed and you will be expected to pay the market rent for your unit, which is \$970.00 effective January 1, 2014.”

On January 8, 2014 the landlord sent the tenant a letter stating:

“This is follow-up to our telephone conversation on January 7, 2014.

. . . Since you are now a single person in a two bedroom unit, you are required to move to a smaller unit in order to continue to be eligible for rental assistance. We will continue with our current subsidy for four (4) months in order to give you time to find a suitable unit.

During this grace period, we encourage you to apply to the housing registry and submit a [landlord] Tenant Application for Housing along with a Tenant Transfer Request Form, which are all enclosed for your convenience, along with a brochure listing all properties within [landlord].

You must be proactive in your search to find alternate housing and willing to move as one bedroom units do not become available very often. However, tenants who want to transfer to another unit within the [landlord’s] portfolio must

be a tenant in good standing. Currently you owe \$533.40 in maintenance charges which must be paid in full before [landlord] will consider your transfer request.

If you decide not to move, your rental assistance will end on April 30, 2014, and effective May 1, 2014, your rent will become \$970.00 per month, which is market rent for your unit. If your rent is paid by direct deposit, please be aware that the results of this review will be automatically applied to the amount of rent deducted from your account.”

By a letter dated April 23 the landlord once again reminded the tenant that effective May 1 his rent would be \$970.00 per month and that if his rent was paid by direct deposit this is the amount that would be deducted from his account.

The full market rent of \$970.00 was deducted from the tenant’s bank account on May 1.

When the June payment was returned NSF by the tenant’s bank the landlord issued and served the tenant with a 10 Day Notice to End Tenancy for Non-Payment of Rent dated June 5, 2014. The tenant filed this application for dispute resolution on June 8, well within the five day time limit.

The tenant did not cancel the automatic payment plan so on July 1 another rent payment of \$970.00 was deducted from his account and then returned NSF to the landlord by his bank.

The tenant has made no payments towards rent since May 1.

The tenant testified that he did not receive any of the letters referred to by the landlord. He did testify that he was told that if he did not pay \$536.00 he would not get a reference. The landlord’s evidence is that all letters were sent to the rental unit by ordinary mail.

The tenant disputes the \$20.00 charge for parking. He testified that at the start of his tenancy parking was included in the rent. He has been paying the parking fee but there was no evidence as to when he started to do so or the circumstances around that change.

The tenant disputes the amount claimed by the landlord for maintenance charges. The landlord says the tenant was charged \$250.00 (of the \$2500.00 actually paid for an alternate form of bedbug treatment) in 2011 and \$283.40 for other repairs performed in

2013. The landlord testified that invoices with full particulars were provided to the tenant at those times. The tenant has paid \$450.00 towards the repairs by two separate payments.

The landlord has offered the tenant two different one bedroom units from its portfolio. The tenant has declined both offers because they were located in communities some distance away from his established support network.

#### Analysis

Section 2 of the *Residential Tenancy Regulation* exempts specified landlords from the requirements of section 34(2), 41, 42 and 43 of the *Residential Tenancy Act* if the rent for the unit is related to the tenant's income. The landlord is one of the landlords specified in the regulation.

The change in rent is a result of a change in the rent assistance paid to the tenant. The Residential Tenancy Branch has no jurisdiction over rent subsidies.

Accordingly, the tenant's application to set aside a rent increase is dismissed.

I accept the landlord's evidence that all correspondence was sent to the rental unit and that the tenant spoke to the landlord's staff on at least one occasion about his situation. I find that the tenant was given clear direction about the impending changes but did not act promptly enough. I find that commencing May 1, 2014, the rent was \$970.00 per month, due on the first day of the month.

Regarding the \$20.00 per month parking fee the onus is on the tenant to at least provide particulars of the alleged over payment. He has not so no order will be made with regard to the parking fees paid in the past. The tenancy agreement filed by the landlord shows that parking is included in the rent. The landlord did not file any documentation to show the agreement had been amended to allow an additional fee for parking. Accordingly, no order will be made for unpaid parking.

The tenant has acknowledged responsibility for the maintenance charges by paying most of the amount claimed by the landlord. No order will be made regarding the amounts already paid by the tenant. The landlord did not provide any evidence in support of the balance of the claim for repairs so no order will be made for the balance of \$83.40.

I find that the tenant was properly served with a 10 Day Notice to End Tenancy for Non-Payment of Rent and did not pay the outstanding rent as required. Accordingly, I find

that the landlord is entitled to an order of possession effective two days after service on the tenant.

I find that the landlord has established a total monetary claim of \$3010.00 comprised of unpaid rent for June, July and August in the amount of \$2910.00, NSF charges for June and July in the amount of \$50.00, and the \$50.00 fee paid by the landlord for this application. I order that the landlord retain the deposit of \$430.00 and I grant the landlord an order under section 67 for the balance due of \$2580.00.

Conclusion

- a. An order of possession has been granted to the landlord. If necessary, this order may be filed in the Supreme Court and enforced as an order of that court.
- b. A monetary order has been granted to the landlord. If necessary, this order may be filed in the Provincial Court and enforced as an order of that court.

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: August 20, 2014

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Residential Tenancy Branch

