



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

Landlord's application: OPR, MNR, MNDC

Tenant's applications: CNR, MT, RR

### Introduction

This hearing dealt with cross applications. The landlord applied for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent and loss of rent. The tenant applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and more time to dispute it; and, authorization to reduce rent for the purchase of a refrigerator. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

### Preliminary and Procedural Matters

The tenant had filed two Applications for Dispute Resolution identifying the matters under dispute, one on June 25, 2014 and the second on June 27, 2014 and both of these Applications were joined to be heard along with the landlord's Application. The tenant confirmed that she has received only one 10 Day Notice to End Tenancy and only one refrigerator is the subject of these two Applications. From what the tenant stated it appears as though a procedural error was made when the tenant sought to provide evidence for her June 25, 2014 Application for Dispute Resolution and another Application was created on June 27, 2014.

The tenant received a 10 Day Notice on June 17, 2014 and her Application was accepted on June 25, 2014. A tenant who receives a 10 Day Notice has five days to file an Application for Dispute Resolution to dispute it; however, an Arbitrator may extend the deadline for filing in extraordinary circumstances. The tenant submitted that she attended the Service BC office for purposes of filing an Application for Dispute Resolution to dispute the 10 Day Notice on June 20, 2014; however, she did not have the funds to pay the fee and did not have documents to confirm her income on that date for purposes of obtaining a fee waiver since she had recently applied for Employment Insurance (EI) benefits. The tenant stated that the Service BC staff advised her to return to the office when she received the documents from the EI office. The tenant returned to the Service BC office on June 25, 2014 with documents to confirm her income. I was satisfied the circumstances described by the tenant are extraordinary and I granted her request to extend the filing deadline so as to consider the 10 Day Notice a disputed Notice to End Tenancy.

It should also be noted that another Application was filed by the on June 12, 2014 and that matter is set for hearing in October 2014. That Application identifies an additional rent increase

as a matter under dispute and includes a monetary claim related to the tenant's allegation that the tenant was injured upon stepping in a hole on the residential property. As I informed the parties during this hearing, the monetary claim for damages for the tenant's injury are not sufficiently related to the validity of the 10 Day Notice as a landlord's negligence to repair and maintain the property is not a legal basis for withholding rent. However, overpaying one's rent is a basis for withholding rent; therefore, I found that a determination must be made as to the amount of rent the tenant is required to pay in order to determine the enforceability of the 10 Day Notice that is the subject of the Applications before me. Accordingly, by way of this decision I have made a determination as to the amount of rent payable by the tenant and whether the tenant has overpaid rent.

#### Issue(s) to be Decided

1. Is the tenant required to pay rent of \$1,100.00 or \$1,400.00 per month?
2. Was the tenant legally entitled to withhold any amount from rent due for June 2014?
3. Should the 10 Day Notice to End Tenancy be upheld or cancelled?
4. Is the landlord entitled to an Order of Possession for unpaid rent?
5. Is the landlord entitled to a Monetary Order for unpaid rent and loss of rent?
6. Is the tenant entitled to be reimbursed by the landlord for the purchase of a fridge?

#### Background and Evidence

There is no written tenancy agreement for this tenancy; however, it was undisputed that the tenant was provided access to the rental unit in the last week of September 2013, without charge, and was expected to start paying rent on October 1, 2013 and on the 1<sup>st</sup> day of every month thereafter.

It was also undisputed that the tenant paid the landlord \$200.00 for a security deposit. The tenant claimed that the security deposit was to be \$700.00 but the rental unit required so much cleaning that the landlord agreed to compensate her \$500.00 and apply it to the security deposit. The landlord denied making any such agreement to compensate the tenant for cleaning as he had hired cleaners and although the tenant cleaned some more she took this upon herself to satisfy her own standards of cleanliness. The landlord took the position that he merely waived collection of the balance of the security deposit in recognition of the tenant's financial position.

It was undisputed that the tenant paid the landlord rent of \$1,400.00 each month for the months of October 2013 through to May 2014 and then paid only \$700.00 for the month of June 2014. On June 17, 2014 the landlord personally served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice). The Notice indicates the tenant failed to pay rent of \$1,400.00 on June 1, 2014 and has a stated effective date of June 27, 2014. The tenant filed to dispute the Notice and did not pay any more rent. The tenant continues to occupy the rental unit and has not paid any rent for July 2014 or August 2014.

### **Landlord's Position**

The landlord seeks an Order of Possession due to the tenant's failure to pay rent and a Monetary Order for \$700.00 in rent owing for June 2014 as well as loss of rent for the month of July 2014 in the amount of \$1,400.00 and \$1,400.00 for the month of August 2014.

### **Tenant's Position**

The tenant submitted that the landlord and tenant agreed that the rent would be \$1,100.00 in the month of September 2013 during a verbal conversation between the landlord and the tenant that took place in the driveway of the residential property. According to the tenant, on the day before the tenancy was to commence, a realtor attended the property, introduced herself as the property manager, and stated the rent would be \$1,600.00 per month. The tenant testified that she advised the realtor that she could not afford such an amount. The realtor called the landlord on the telephone and the realtor informed the tenant that the landlord would accept \$1,400.00 per month. The tenant stated that she agreed to pay \$1,400.00 as she had nowhere else to go. The tenant stated she subsequently met the realtor at her office and the realtor informed her that the landlord would be managing the property.

The tenant explained that several months later she learned that a verbal agreement is binding and that rent should be returned to \$1,100.00 per month based upon the original agreement reached between the landlord and the tenant.

The tenant confirmed that she paid \$700.00 for June 2014 as being the monthly rent of \$1,100.00 less \$400.00 she spent to purchase a fridge for the rental unit since the fridge provided by the landlord stopped working and attempts to contact the landlord were unsuccessful. The tenant described attempts she made to contact by telephone and knocking on the door of his residence. The tenant acknowledged that she did not give the landlord a receipt for the fridge purchase prior to deducting it from the rent.

The landlord testified that prior to the start of the tenancy, the tenant was temporarily living at a neighbouring house and the neighbour had enquired with him about the amount of rent the landlord was seeking. The neighbour and the tenant suggested the landlord accept rent of \$1,000.00 or \$1,100.00 per month to which the landlord repeatedly responded that the realtor/property manager would determine the monthly rent. The landlord denied that he agreed to accept rent of \$1,100.00 from the tenant.

The landlord acknowledged that the realtor attended the residential property shortly before the tenancy began for purposes of setting the rent. The realtor called him after speaking with the tenant and then the landlord went to the realtor's office. The landlord explained that although the property would garner rent of \$1,600.00 per month, he agreed to accept a lesser amount of \$1,400.00 since he would manage the property without the assistance of the realtor and the savings in property management fees would nearly offset the lesser rent.

The landlord provided as evidence a letter from the realtor. In the letter, the realtor states that she attended the property for the purpose of setting the rent. When she went to the property the cleaners were there and she met the tenant. The realtor told the tenant the rent would be \$1,600.00 per month. According to the realtor the tenant stated she could not afford that amount but agreed she could pay \$1,400.00 per month. The realtor states that she met with the landlord and the landlord agreed upon the lesser amount of rent since the tenant was willing to move in quickly, thus saving the landlord a vacancy, and that he could save money if he managed the property himself.

The landlord stated that he was unaware that the fridge had stopped working and suggested that had he been notified he would have dealt with the matter as he had replaced or repaired other appliances in the home recently. The landlord acknowledged that he is difficult to reach on the telephone but stated the tenant could have left a note at his residence since he lives very close to the rental unit.

The tenant also took the position that the landlord has “buckets of money” and the little funds she has goes toward other bills. The tenant attributed her lack of funds to a personal injury she alleges occurred on the residential property and that she should be permitted occupancy of the rental unit until that monetary claim is resolved. The landlord was not agreeable to permitting the tenant to remain on the property as it clear to him that she cannot afford the property.

### Analysis

Although the Act requires the landlord to prepare written tenancy agreements, the Act defines a tenancy agreement to include tenancy agreements that are entered into orally. As such, parties with a verbal tenancy agreement have both rights and obligations that are provided under the Act.

Under section 26 of the Act, a tenant is required to pay rent that is due to the landlord pursuant to their tenancy agreement, even if the landlord has violated the Act, regulations, or tenancy agreement; unless, the tenant has a legal right to withhold rent under the Act.

At issue in this case is the amount of rent that was agreed upon by the parties verbally. The difficulty with verbal agreements quickly becomes apparent when the parties disagree upon what was agreed upon. Since the landlord submitted that rent was set at \$1,400.00 and the tenant paid \$1,400.00 in rent from the outset of the tenancy and for several months thereafter, I find the tenant bears the burden to demonstrate the agreed upon rent was some other amount. The burden of proof is based upon the balance of probabilities.

Considering the parties provided disputed verbal testimony to determine the amount of rent agreed upon I have relied upon other evidence, including the realtor's written statement which

was consistent with the landlord's position, but more importantly, the following actions of the tenant.

- The tenant paid \$1,400.00 every month for several months and during that time she admittedly had no communication with the landlord indicating they had a different agreement.
- When the realtor attended the property shortly before the tenancy began the tenant's response to realtor's position that rent would be \$1,600.00 was that she could not afford that amount and she did not indicate that she and the landlord had already set the rent at \$1,100.00.

I find it reasonable that if a landlord had agreed to accept a certain amount of rent, subsequent attempts to increase the rent would have been met with a response that the rent was already set at a much lesser amount. Yet, the tenant did not respond in that way. If I were to accept the tenant's explanation that she felt as though she had no other choice but to accept a rent increase given the late date, I find it peculiar that the tenant could have raised the matter with the landlord or the Residential Tenancy Branch shortly after moving in. Rather, the tenant allowed several months to pass and then decided to withhold rent without any communication to the landlord. Finally, given the evidence put forth by the tenant concerning her lack of funds, I find the landlord's position is more likely: that the tenant does not have the money to pay the agreed upon rent. For all of these reasons, **I find that the agreed upon rent was \$1,400.00 per month.**

With respect to the \$400.00 deduction the tenant made for the purchase of a fridge, I find the replacement of the fridge does not meet the criteria of an "emergency repair" as defined in section 33 of the Act. Nor, did the tenant present a receipt for an emergency repair to the landlord prior to making a deduction from rent. Therefore, **I find the tenant was not entitled to withhold \$400.00 from rent for the purchase of a fridge.**

As the tenant was informed during the hearing, the individual financial circumstances of her or the landlord do not create an obligation or exemption from an obligation that is provided under the Act. Any right to withhold rent is specifically provided for under the Act and such circumstances are extremely limited. In other words, a tenant is statutorily required to pay the rent that is due to the landlord regardless of her financial circumstances, or those of the landlord, and the tenant did not establish that she had a legal right to withhold rent.

Having found the monthly rent was set at \$1,400.00, which the tenant failed to pay, and the tenant did not have the legal right to withhold any amount from rent due for June 2014, I uphold the 10 Day Notice issued on June 17, 2014. As a result, I dismiss the tenant's request to cancel the 10 Day Notice. Accordingly, I find this tenancy has ended and the landlord is entitled to regain possession of the rental unit due to unpaid rent. **Provided to the landlord with this decision is an Order of Possession effective two (2) days after service upon the tenant.**

In light of the above findings, I also grant the landlord's request to recover unpaid rent of \$700.00 for the month of June 2014. Since the tenant remains in possession of the rental unit I further award the landlord loss of rent in the amount of \$2,800.00 for the months of July and August 2014. Therefore, **I provide the landlord with a Monetary Order in the total sum of \$3,500.00 as he requested.**

Since the tenancy has ended I do not consider the tenant's request for a reduction of rent otherwise payable. Nor, do I award the tenant compensation for the purchase of the fridge as I find she did not take sufficient action to seek repairs by the landlord. Although the landlord is admittedly difficult to reach over the telephone, the tenant acknowledged that that she did not leave a written message at his residence or mail any written communication to him about the fridge. Having declined the tenant's request for compensation for the purchase of a fridge, **the fridge remains the tenant's personal property to do with as she so chooses.**

As the landlord did not request authorization to retain the security deposit, it remains in trust for the tenant, to be administered in accordance with the Act. As such, I found it unnecessary to make a determination as to the amount of the security deposit held by the landlord.

#### Conclusion

The tenancy has ended and the landlord is provided an Order of Possession effective two (2) days after service upon the tenant.

I found that the monthly rent was \$1,400.00 and the tenant was not entitled to withhold rent or deduct \$400.00 from rent for the purchase of a fridge. The landlord is entitled to recover unpaid and loss of rent for the months of June 2014 through August 2014 in the sum of \$3,500.00 and has been provided a Monetary Order for this amount to serve upon the tenant and enforce as necessary.

The tenant's Applications that were filed on June 25 and 27, 2014 have been dismissed. As the tenant's request for compensation for the fridge have been denied, the fridge that she purchased remains her personal property.

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 22, 2014

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Residential Tenancy Branch

