



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

For the tenant: CNR, MT, FF

For the landlord: OPL, OPR, MNR, MNDC, MNDS, FF

### **Introduction**

This hearing was convened as the result of the cross applications of the parties for dispute resolution seeking remedy under the Residential Tenancy Act (the “Act”).

The tenant applied for an order cancelling the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”), for an order granting more time to make an application to cancel a notice to end tenancy, and for recovery of the filing fee paid for this application.

The landlord applied for an order of possession for the rental unit due to unpaid rent based upon her 10 Day Notice, an order of possession due to another use of the property by the landlord, based upon a 2 Month Notice to End Tenancy for Landlord’s Use of the Property, a monetary order for money owed or compensation for damage or loss and unpaid rent, for authority to retain the tenant’s security deposit, and for recovery of the filing fee.

At the beginning of the hearing, neither party raised any issue regarding the service of the other’s application or evidence.

The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties were provided the opportunity to present their evidence orally, refer to documentary evidence submitted prior to the hearing, respond to the other’s evidence, and make submissions to me.

I have reviewed the oral and written evidence of the parties before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the landlord's 10 Day Notice and for recovery of the filing fee paid for this application?

Is the landlord entitled to an order of possession for the rental unit, monetary compensation, and to recover the filing fee?

Background and Evidence

The landlord submitted three separate tenancy agreements. Two tenancy agreements showed this tenant and another tenant entering into a 1 year, fixed term tenancy, beginning on August 1, 2008, purporting to divide the residential property into 2 separate units, an upper and lower suite, with this tenant paying rent of \$1000 per month, and the lower tenant paying rent of \$450, but for a total rent owing for the residential property of \$1450. The landlord stated that the tenants were no co-tenants and were responsible only for their respective rental units.

The landlord submitted another tenancy agreement, signed on May 6, 2011, showing that this tenant as the only tenant, owing rent of \$1450 for the entire residential property.

In response to my question, the landlord stated that the tenant owed monthly rent of \$1450, and the tenant stated her monthly rent was \$1000, as she lived only in the upper suite.

The parties agreed that the landlord is holding a security deposit of \$525 received from the tenant.

Pursuant to the Rules of Procedure, the landlord proceeded first in the hearing to explain or support the Notice to End Tenancy.

**Landlord's application-**

The landlord stated that she served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent and Unpaid Utilities on April 29, 2014 by leaving it with the tenant, and on May 8, 2014, by registered mail. A review of the Notice supplied by the landlord was not clear as to the exact amount of unpaid rent she claimed the tenant owed. The landlord listed several figures, such as \$750 and \$1250 as of May 3, 2014, and arrears from 2013 of \$5800, and stating that the tenant was consistently late and short

payments. There was never a specific amount on the Notice as claimed by the landlord as unpaid rent on the day the Notice was issued.

The monetary claim presumably for unpaid rent listed on the landlord's application also showed several figures written in the by landlord, such as \$2000, \$5800, \$750 and \$1250. In an attempt to ascertain the exact amount of the landlord's monetary claim, the landlord submitted that the actual amount she claimed on the day she filed her application was \$1025, which was not listed on her 10 Day Notice or her application.

As to the landlord's 2 Month Notice to End Tenancy for Landlord's Use of the Property, listing an effective end of tenancy date of July 31, 2014, the landlord submitted that she served this Notice to the tenant on May 30, 2014, via personal service. The landlord explained that due to the financial difficulties she has encountered with this tenancy, it was necessary for her to move back to the residential property.

*Tenant's response-*

The submitted that she did not owe the landlord the amount claimed, due to illegal rent increases. The tenant reaffirmed that she rented only the top portion of the rental unit, and that her father used only a portion of the lower suite, not the entire suite as claimed by the landlord.

The tenant confirmed that she received the landlord's 2 Month Notice, and that she has not filed or amended her application in dispute of the Notice. When questioned, the tenant submitted she assumed the matter would be discussed at the hearing.

Analysis

**Landlord's Application:**

As to the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, I find the Notice itself was confusing and unclear as the amount listed was owed for unpaid rent, due to the numerous notations of the Notice. I am therefore not prepared to enforce the landlord's 10 Day Notice, as I find she has not sufficiently supported the Notice through her contradictory evidence. As a result, I hereby cancel the Notice.

As to the landlord's 2 Month Notice to End Tenancy for Landlord's Use of the Property, I find the tenant was served and received the 2 Month Notice on May 30, 2014, and has not filed an application in dispute thereof. Accordingly, I find that the tenant is conclusively presumed under section 49(9) of the Act to have accepted that the tenancy

ends on the effective date of the Notice, in this case July 31, 2014, and must move out of the rental unit by that date.

I find that the landlord is entitled to and I therefore grant an order of possession for the rental unit effective at 1:00 p.m. on July 31, 2014.

As to the landlord's monetary claim, I find that the landlord submitted insufficient and unclear evidence as to the amount she was claiming or what amount of rent was owed by the tenant. For instance, the landlord testified that her claim as of the day of the filing of her application was \$1025, yet that figure was not listed on her application or 10 Day Notice.

Due to the landlord's insufficient evidence, I find that she has not supported her claim for unpaid rent and I dismiss her monetary claim for unpaid rent through May 2013. The landlord is at liberty to make a claim for any rent which may be due and owing for subsequent months.

As the landlord was partially successful, I have awarded her recovery of her filing fee of \$50.

### **Tenant's application:**

Due to the above, the tenant's application for dispute resolution seeking a cancellation of the Notice is granted as I have cancelled the 10 Day Notice to End Tenancy issued by the landlord.

However, the tenancy is ending and the landlord has been issued an order of possession for the rental unit based upon the landlord's 2 Month Notice, as described above, and the tenant is directed to vacate the rental unit by 1:00 p.m. on July 31, 2014, the effective move-out date listed on the Notice.

As the tenancy is ending, I decline to award the tenant recovery of the filing fee paid for this application.

### **Conclusion**

The landlord's application for an order of possession for the rental unit based upon her 2 Month Notice has been granted.

I grant the landlord a final, legally binding order of possession for the rental unit, which is enclosed with the landlord's Decision. Should the tenant fail to vacate the rental unit pursuant to the terms of the order after it has been served upon her, this order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court. The tenant is advised that costs of such enforcement are recoverable from the tenant.

The landlord's monetary claim is dismissed due to insufficient evidence to support the claim as stated.

The landlord has been granted recovery of her filing fee of \$50. The landlord is allowed to retain \$50 from the tenant's security deposit in satisfaction of her monetary award, as requested in her application.

The landlord is reminded of section 51(1) of the Act regarding the tenant's compensation for having received a 2 Month Notice.

The tenant's application seeking cancellation of the 10 Day Notice is granted; however, the tenancy is ending based upon the landlord's 2 Month Notice.

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 11, 2014

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Residential Tenancy Branch

