



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR OPC MND MNR MNSD MNDC FF  
CNC CNR

### Preliminary Issues

Residential Tenancy Rules of Procedure, Rule 2.3 states that, in the course of the dispute resolution proceeding, if the arbitrator determines that it is appropriate to do so, he or she may dismiss the unrelated disputes contained in a single application with or without leave to reapply.

Upon review of the Landlord's application I have determined that I will not deal with all the dispute issues the Landlord has placed on their application. For disputes to be combined on an application they must be related. Not all the claims on this application are sufficiently related to the main issue relating to the Notices to end tenancy. Therefore, I will deal with the Landlord's request for Orders of Possession for unpaid rent and cause, plus the request for a monetary order for unpaid rent and money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement as it relates to use and occupation of the unit, and I dismiss the balance of the Landlord's claim with leave to re-apply.

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord filed on June 10, 2014, seeking Orders of possession for unpaid rent and for cause; to obtain a Monetary Order for unpaid rent, for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement and to recover the cost of the filing fee from the Tenant for this application.

The Tenant filed his initial application on May 15, 2014 to cancel the 1 Month Notice to end tenancy issued for cause and amended his application on June 4, 2014 to include a request to cancel a 10 Day Notice to end tenancy for unpaid rent.

The Landlord's Agent spoke on behalf of the Landlord throughout the entire hearing, as English was the Landlord's second language. Therefore, for the remainder of this

decision, all submissions made by the Agent will be referred to as submissions from the Landlord.

The parties appeared and gave affirmed testimony. Each party was provided an opportunity to ask questions about the process, as explained in the recorded message at the outset of this proceeding; each party declined and acknowledged that they understood how the conference would proceed.

The Tenant confirmed receipt of the Landlord's application for Dispute Resolution and his evidence. The Landlord testified that he was only served a copy of the Tenant's initial application to cancel the Notice for cause. The Tenant testified that he personally served the Landlord with his initial application for Dispute Resolution but that he left the copy of his amended application outside the door at the Landlord's store, as the store was not open at the time the Tenant attended. Upon further clarification the Tenant provided contradictory testimony as to how the amended application was served. First he stated it was left outside the door, and then he said it was put in a mailbox, and then he stated he couldn't remember exactly where it was placed.

Section 89 of the Act provides methods for service of an application for Dispute Resolution which includes personal service or service by registered mail.

Based on the above, I find the Tenant has not served the Landlord with a copy of his amended application in accordance with section 89 of Act. Therefore, that application cannot be considered in this proceeding, and is dismissed.

#### Issue(s) to be Decided

1. Did the tenancy end prior to the issuance of the 10 Day and 1 Month Notices?
2. Should the 1 Month Notice to end tenancy be cancelled or upheld?
3. Should the Landlord be granted an Order of Possession?
4. Has the Landlord proven entitlement to a Monetary Order?

#### Background and Evidence

It was undisputed that the parties entered into a verbal tenancy agreement for a month to month tenancy that commenced on August 1, 2013. The Tenant was required to pay rent of \$450.00 on the first of each month and at the start of the tenancy the Tenant paid \$225.00 as the security deposit plus \$20.00 as a key deposit. The rental unit is a single room occupancy unit with shared kitchen, living room, and washroom facilities.

The Landlord submitted into evidence a copy of a hand written, notice to end tenancy, signed by the Tenant which indicates the Tenant will be vacating the rental unit on April 30, 2014. The Landlord explained that the Tenant had previously promised to vacate the unit, after discussing how the Tenant's behaviour was negatively affecting the other Tenants, but then the Tenant appeared to have changed his mind about moving. After

further discussions the Tenant agreed to vacate by April 30<sup>th</sup>, which is when he provided the Landlord with the written note.

The Landlord testified that once he had the Tenants notice to vacate he made arrangements to rent the room to another tenant. When the Tenant failed to move out the Landlord personally served the Tenant with a 1 Month Notice to end tenancy for cause on May 2, 2014, listing the following reasons:

- Tenant is repeatedly late paying rent
- Tenant or a person permitted on the property by the tenant has:
  - Significantly interfered with or unreasonable disturbed another occupant or the landlord
  - Seriously jeopardized the health or safety or lawful right of another occupant or the landlord
  - Put the Landlord's property at significant risk
- Tenant has engaged in illegal activity that has or is likely to
  - Damage the landlord's property
  - Adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

The Landlord stated that the Tenant is always a few days late paying his rent. The Tenant paid rent for May on May 3, 2014, in full, but no payment has been received for June 2014. Then on July 4, 2014 the Landlord received a cheque from Income Assistance for \$375.00, which was mailed directly to the Landlord's company, but the Landlord has not cashed it.

The Tenant testified that in March sometime, he had mutually agreed with the Landlord that he would move out of the rental unit but he decided to delay vacating the unit because he could not find another place to move into. He said that the Landlord showed up at his door with someone who the Landlord said was going to be the new tenant. After a brief discussion the Landlord demanded that the Tenant provide him with a written note that stated he would be vacating the unit at the end of April 2014, which is what he did.

The Tenant confirmed that his rent has been paid late about 3 or 4 times this past year. He submitted that he is a student and that his student funding does not always come in on the first of each month, so rent would be paid when he received the money. He stated that he attempted to pay his June rent but the Landlord would not accept it. Then he said that he had made an application for Income Assistance but that it took some time to get approved because he had told his worker that he was getting evicted so they would not pay his rent to the Landlord. The Tenant stated that he could not explain why \$375.00 was sent to the Landlord on July 4<sup>th</sup> when his rent was \$450.00.

## Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

The *Residential Tenancy Act* defines a “**tenancy agreement**” as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

Section 91 of the Act stipulates that except as modified or varied under this Act, the common law respecting landlords and tenants applies in British Columbia.

Common law has established that oral contracts and/or agreements are enforceable. Therefore, based on the above, I find that the terms of this verbal tenancy agreement are recognized and enforceable under the *Residential Tenancy Act*.

Section 44(1) of the Act stipulates that a tenancy ends if the tenant or landlord gives notice to end the tenancy, in accordance with the Act, or if the parties mutually agree to end the tenancy.

The *Residential Tenancy Policy Guideline # 11* provides that a landlord or tenant cannot unilaterally withdraw a Notice to End Tenancy, without the written consent of both parties that is signed prior to the effective date of the notice.

In this case the parties mutually agreed to end this tenancy in March 2014, and the Tenant provided written notice that he would vacate the unit by April 30, 2014. The Tenant failed to move out of the unit on April 30, 2014 and unilaterally decided that he wanted to continue with his tenancy, without having the Landlord's written permission to cancel his notice to vacate.

Based on the above, I find this tenancy initially ended on April 30, 2013, in accordance with the Tenant's note to vacate. The Tenant was served a 1 Month Notice for Cause on May 1, 2014. That being said, on May 3, 2014, the Landlord accepted \$450.00 as full payment of rent for May 2014, which I find reinstated the tenancy.

A 10 Day Notice for unpaid rent was served to the Tenant on June 2, 2014. The effective date of the 10 Day Notice was **June 12, 2014**, pursuant to section 46 of the Act.

Notwithstanding the Tenant's contradictory testimony that the Landlord refused to accept his rent payment and Income Assistance had computer problems and could get his rent paid on time; the undisputed evidence was that the Tenant had not paid the full rent for June or July 2014. The Landlord received a cheque from Income Assistance on July 4, 2014, for partial rent payment of \$375.00, but had not yet cashed it.

Based on the foregoing, I find this tenancy ended on **June 12, 2014**, the effective date of the 10 Day Notice, in accordance with section 46 of the Act. Accordingly, I grant the Landlord an Order of Possession.

Section 26 of the Act stipulates that a tenant must pay rent in accordance with the tenancy agreement; despite any disagreements the tenant may have with their landlord. The Landlord received a payment of \$375.00 from Income Assistance, therefore, I find the Landlord is entitled to a monetary claim for June unpaid rent in the amount of **\$75.00** (\$450.00 - \$375.00). The Landlord has liberty to cash the \$375.00 cheque issued by Income Assistance.

As noted above this tenancy ended **June 12, 2014**, in accordance with the 10 Day Notice. Therefore I find the Landlord is seeking money for use and occupancy of the unit for July 2014, not rent. The Tenant is still occupying the unit which means the Landlord will not regain possession until after service of the Order of Possession. Therefore, I find the Landlord is entitled to use and occupancy up to July 15, 2014, in the amount of **\$225.00**

The Landlord has succeeded with their application; therefore, I award recovery of the **\$50.00** filing fee.

**Monetary Order** – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit plus interest as follows:

Unpaid June 2014 Rent	\$ 75.00
Use & Occupancy to July 15, 2014	225.00
Filing Fee	<u>50.00</u>
<b>SUBTOTAL</b>	<b>\$350.00</b>
<b>LESS: Security Deposit \$225.00 + Interest 0.00</b>	<b><u>-225.00</u></b>
<b>Offset amount due to the Landlord</b>	<b><u>\$125.00</u></b>

As noted above the Landlord has been granted an Order of Possession; accordingly, I dismiss the Tenant's application in its entirety, without leave to reapply.

### Conclusion

The Landlord has been granted an Order of Possession effective **Two (2) Days after service upon the Tenant**. This Order is legally binding and must be served upon the Tenant. In the event that the Tenant does not comply with this Order it may be filed with the Province of British Columbia Supreme Court and enforced as an Order of that Court.

The Landlord has been awarded a Monetary Order for **\$125.00**. This Order is legally binding and must be served upon the Tenant. In the event that the Tenant does not

comply with this Order it may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

The Landlord still holds a key deposit of \$20.00. If the Tenant returns the keys then the Landlord may apply the \$20.00 key deposit against the outstanding balance owed on the monetary order.

I HEREBY DISMISS the Tenant's application, 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 10, 2014

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Residential Tenancy Branch

