



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Montello Holdings Ltd. and Vancouver Eviction Services, Agent  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute codes      CNR, OP MNR FF

### Introduction

This hearing dealt with applications by the tenant and by the landlord. The tenant applied to cancel a 10 day Notice to End Tenancy for unpaid rent. The landlord applied for an order of possession and a monetary order. The hearing was conducted by conference call. The landlord called in and participated in the hearing with his agent. The named tenant also called in and participated in the hearing.

### Issues

Is the landlord entitled to an order of possession?  
Is the landlord entitled to a monetary order?

### Background and Evidence

This is the second hearing with respect to this tenancy. The tenant previously applied to cancel a 10 day Notice to End Tenancy for unpaid rent dated April 9, 2014. The Notice claimed that the tenant failed to pay rent in the amount of \$4,180.00 that was due on April 1, 2014. In a decision dated June 10, 2014 the arbitrator noted that the tenant admitted that he owed rent, but disputed the amount claimed by the landlord. The arbitrator found that the Notice to End Tenancy given by the landlord was defective because it was not properly filled out. He also found that the landlord failed to submit documentary evidence to establish the amount of rental arrears claimed to be owed to the landlord and set aside the Notice to End Tenancy.

The landlord served the tenant with another 10 day Notice to End Tenancy dated June 10, 2014. The Notice alleged that the tenant owed \$5,300.00 in rent as of June 1, 2014 and the Notice required the tenant to move out by June 23, 2014. The Notice was served by posting it to the door of the rental unit on June 10, 2014. The tenant filed an application to dispute the Notice to End Tenancy on June 16, 2014. The landlord and

the landlord's agent said they were unaware of an application by the tenant. The tenant testified that he served the landlord by giving the application to a bailiff sent to the rental property by the landlord. The landlord did say at the hearing that he hired a bailiff to act for him with respect to this tenancy. It is unclear whether the supposed bailiff was in fact the landlord's agent on this application.

The landlord testified that the tenancy began April 1, 2013 and the rent is \$600.00 per month. The landlord said that the tenant has not made regular rent payments and including the rent for June there is \$4,480.00 owed. The tenant paid \$500.00 in June, after the landlord filed its application, but has paid nothing since. The tenant acknowledged at the hearing that he has not paid rent for July or for August. The tenant does not agree with the amount the landlord claimed to be owed for rent. He said that he has paid rent to the landlord in cash, dropped off to a mail box in the rental property provided by the landlord for the purpose of receiving rent payments. He said he has not been given receipts for rent payments and said that he does not have his own records of payments that he has made. He also said the he used to work for the landlord, but did not mention the nature of the work.

The landlord's agent said that she became aware today that the landlord's documentary evidence had not been received by the Residential Tenancy Branch. She said that she faxed documents to the Residential Tenancy Branch in the morning before the hearing and she said they had been previously sent to the tenant. The landlord's agent said that one of the documents sent was a handwritten document setting out the rental payments received from the tenant.

### Analysis

Based on the evidence presented at the hearing, I am satisfied that there the tenant has failed to pay the rent when due and that at the date of the hearing there is outstanding rent owed to the landlord. The tenant was served with a Notice to End Tenancy; he applied to dispute the notice, but he has not paid rent for the past two months. The tenant appears to be exploiting the landlord's failure to keep or provide adequate records of rent payments. The tenant also did not serve the landlord with the application in the manner required by the *Residential Tenancy Act*. For these reasons I find that the tenant's application to cancel the 10 day Notice to End Tenancy should be dismissed without leave to reapply.

Section 55 of the *Residential Tenancy Act* provides as follows:

**55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,

(a) the landlord makes an oral request for an order of possession, and

(b) the director dismisses the tenant's application or upholds the landlord's notice.

I have dismissed the tenant's application to dispute the landlord's Notice to End Tenancy. The landlord has made its own application for an order for possession. Pursuant to section 55 I grant the landlord an order for possession effective two days after service upon the tenants. This order may be registered in the Supreme Court and enforced as an order of that court.

*Monetary Order and Security Deposit* – The landlord has not provided any records to establish the amount of outstanding rent arrears. The landlord bears the burden of proving the amount that is owed by the tenant by submitting proper business records to establish his claim; he has not provided any documentary evidence. The evidence given by the landlord at the hearing and acknowledged by the tenant is that the rent is \$600.00 per month; the tenant paid only \$500.00 for June and nothing thereafter. I find that the landlord has established a total monetary claim of \$1,300.00 for the outstanding rent for June, July and August. The landlord is entitled to recover the \$50.00 filing fee for this application for a total award of \$1,350.00 and I grant the landlord an order under section 67 in the said amount. This order may be filed in the Small Claims 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 12, 2014

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Residential Tenancy Branch

