



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding LLH Investments Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes**

For the tenant: CNR, MNDC

For the landlord: MNSD, OPR, MNR, 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 a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”) and a monetary order for money owed or compensation for damage or loss.

The landlord applied for an order of possession for the rental unit due to unpaid rent, a monetary order for 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.

*Preliminary matter*-I have determined that the portion of the tenant’s application dealing with her monetary claim is unrelated to the primary issue of disputing the Notice. As a result, pursuant to section 2.3 of the Rules, I have severed the tenant’s Application and dealt only with the tenant’s application seeking cancellation of a 10 Day Notice and the

landlord's application seeking an order of possession for the rental unit and a monetary order.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the Notice?

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

Background and Evidence

The tenancy agreement submitted by the landlord shows that this tenancy began on March 1, 2014, monthly rent is \$750 for the two tenants, and the tenants paid a security deposit of \$375 at the beginning of the tenancy. The tenant stated that she moved into the rental unit on February 11, 2014.

The evidence confirmed that the other listed tenant, DO, who was listed on the written tenancy agreement, has since vacated the rental unit. The undisputed oral evidence also shows that each tenant was responsible to pay one-half of the monthly rent, or \$375 each, and that the tenancy continued after tenant DO vacated, with the tenant responsible for paying \$375 per month.

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 the tenants were served with a 10 Day Notice to End Tenancy for Unpaid Rent on June 3, 2014, by attaching it to the tenants' door, listing unpaid rent of \$750 as of June 1, 2014. The effective move-out date listed was June 13, 2014. The tenant acknowledged receiving the Notice. The landlord's evidence shows that the rent deficiency was for May and June, or \$375 each.

The landlord asserted that since the issuance of the Notice, they have not received any rent payments from tenant TR, and that she is now deficient in rent in the amount of \$750, or \$375 for June and July each. The landlord has not claimed tenant DO's portion of the monthly rent, as their monetary claim is \$750 for unpaid rent.

*Tenant's response-*

The tenant claimed that the landlord refused her rent payment offered on June 1, 2014, as her witness attempted to hand the landlord \$300 on behalf of the tenant, but that the rent was refused.

As to the rent for July, the tenant submitted that income assistance Ministry has not given her funds for July as she is under investigation for fraud.

*Landlord's response to the tenant's testimony-*

The landlord submitted that the witness was a former tenant of the residential property, who owes the landlord in excess of \$2000, and that the payment of \$300 was not identified as being on the tenant's behalf.

*Tenant's witness-*

The tenant's witness stated that he handed a landlord's agent \$300 on behalf of the tenant, and that the agent returned the funds two days later.

Analysis

**Landlord's Application:**

As there was no proof that the tenant DO was residing in the rental unit at the time the landlord served their notice of hearing and application for dispute resolution upon him via registered mail, I decline to make any findings against tenant DO, as there was no proof the landlord had served the tenant DO according to section 89 of the Act.

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so.

Where a tenant fails to pay rent when due, the landlord may serve the tenant with a 10 Day Notice for Unpaid Rent, pursuant to section 46 of the Act. Upon receipt of the 10 Day Notice, the tenant must pay the outstanding rent or dispute the Notice within five days.

In the case before me, although the tenant disputed the Notice within 5 days, I find the landlord submitted sufficient oral and documentary evidence that the tenant owed the

landlord rent when the Notice was issued and that she did not pay all of the rent owed to the landlord within five days of receiving the Notice. I was not persuaded by the tenant's testimony that rent of \$300 was offered by the landlord, with the landlord's subsequent refusal or acceptance. Even had I accepted the tenant's version of events, their evidence shows that only \$300 was offered to the landlord, not \$375.

Therefore, I find the tenancy has ended due to the tenant's failure to pay rent and the landlord is entitled to regain possession of the rental unit.

I find that the landlord is entitled to and I therefore grant an order of possession for the rental unit effective 2 days after service upon the tenant.

I find the landlord submitted sufficient evidence that the tenant owes the amount of \$750, comprised of a rent deficiency for June and July 2014, for \$375 each month.

I allow the landlord recovery of their filing fee of \$50 due to their successful application.

I therefore find that the landlord is entitled to a monetary award in the amount of \$800, comprised of outstanding rent of \$750 through July 2014, and the \$50 filing fee paid by the landlord for this application.

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

I dismiss the tenant's application for dispute resolution seeking a cancellation of the Notice without leave to reapply as I have found that the 10 Day Notice to End Tenancy issued by the landlord has been supported by the landlord and is therefore valid and enforceable.

### **Conclusion**

The landlord's application 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.

At the landlord's request, I allow the landlord to retain the tenant's security deposit of \$375 in partial satisfaction of their monetary award of \$800 and I grant the landlord a

final, legally binding monetary order for the balance due pursuant to section 67 of the Act for the amount of \$425, which I have enclosed with the landlord's Decision.

Should the tenant fail to pay the landlord this amount without delay after the order has been served upon him, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an order of that Court. The tenant is advised that costs of such enforcement are recoverable from the tenant.

The tenant's application seeking cancellation of the Notice is dismissed, without leave to reapply.

The portion of the tenant's application seeking monetary compensation is dismissed with leave to reapply as that portion was severed from the remaining portion.

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 30, 2014

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Residential Tenancy Branch

