



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding SIESTA ROOMS LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR MND FF

### Introduction

This hearing dealt with an Application for Dispute Resolution filed on July 16, 2014, by the Landlord to obtain an Order of Possession and a Monetary Order for: damage to the unit, site or property and to recover the cost of the filing fee from the Tenant for this application.

The hearing was conducted via teleconference and was attended by the Landlord. The Landlord provided affirmed testimony that the Tenant was personally served with copies of the Landlord's application for dispute resolution, Notice of dispute resolution hearing, and evidence on July 5, 2014. Based on the submissions of the Landlord I find the Tenant was sufficiently served notice of this proceeding, in accordance with section 89 of the Act; and I proceeded in the Tenant's absence.

### Issue(s) to be Decided

1. Has the Landlord proven entitlement to an Order of Possession?
2. Has the Landlord proven entitlement to a Monetary Order?

### Background and Evidence

The Landlord submitted that the Tenant had been occupying unit # 14 for \$425.00 rent at the time he was hired on to manage this facility back in January 2014. No written tenancy agreements were on file at that time. Then on July 1, 2014 the Tenant entered into a verbal tenancy agreement for unit # 5 and is required to pay rent of \$650.00 on the first of each month and a security deposit of \$325.00. The Landlord is paid \$425.00 directly from Income Assistance each month and the Tenant is required to pay the difference of \$225.00.

The Landlord testified that when transitioning from unit # 14 to # 5 the Tenant entered into a written agreement to pay the amounts owed for rent, the security deposit of \$325.00, and to use his previous security deposit to pay for the \$212.50 of damages in unit # 14. The Tenant short paid the amount owed by \$212.00 so on July 5, 2014 the Landlord posted a 10 Day Notice on his door, in the presence of a witness.

The Landlord provided oral evidence that the Tenant has since paid all the outstanding amounts. He argued that the Tenant did not pay the \$212.00 until July 21, 2014, at which time the Landlord issued a receipt that included the words "for continued occupancy". The Landlord stated that he told the Tenant that the former statement written on the receipt meant the Tenant could continue occupying the room. The Tenant has since paid full rent on the following dates: August 7, 2014 and September 2, 2014 and each time the Landlord issued a receipt that stated "for continued occupancy".

### Analysis

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 aforementioned, I find that the terms of this verbal tenancy agreement are recognized and enforceable under the *Residential Tenancy Act*.

A Notice to End Tenancy can be waived and a new or continuing tenancy created, only by the express or implied consent of both parties. The question of waiver usually arises when a landlord has accepted rent from a tenant after the Notice to End Tenancy has been served. If the rent is paid for the period during which the tenant is entitled to possession, that is, up to the effective date of the Notice to End Tenancy, no question of "waiver" can arise as the landlord is entitled to that rent.

In these circumstances, the Tenant is deemed to have received the 10 Day Notice on July 8, 14, three days after it was posted to his door, and the effective date is July 18, 2014. Therefore, the Landlord was able to accept rent for the period up to July 18, 2014, without waiving the 10 Day Notice to End Tenancy.

If the landlord accepts rent for the period after the effective date of the Notice to End Tenancy, the intention of the parties will be in issue. In these circumstances the Landlord had accepted payment on July 21, 2014, for amounts up to July 31, 2014. Subsequent payments were received on August 7<sup>th</sup>, and September 2, 2014, which are payments up to September 30, 2014.

The Landlord issued receipts which indicated the payments were received "for continued occupancy"; and explained to the Tenant that he was allowed to continue to occupy the rental unit. At no time did the Landlord explain to the Tenant that the

payments were for use and occupancy only nor did he explain to the Tenant that the payments would not reinstate the tenancy. Rather, I found the notation on the Landlord's receipts to be very ambiguous and his explanations to be equally unclear.

After careful consideration of the above, I find the Landlord reinstated the tenancy when he accepted payments that exceeded the amount that was due up to July 18, 2014, and find that those payments were received as rent. Accordingly, the 10 Day Notice to end tenancy is hereby cancelled and I dismiss the Landlord's request for an Order of Possession, without leave to reapply.

The evidence supports that the Tenant has paid up all of the arrears. Therefore, I dismiss the Landlord's request for monetary compensation for damages, without leave to reapply.

The Landlord has not succeeded with their application; therefore, I decline to award recovery of the filing fee.

### Conclusion

The 10 Day Notice to end tenancy issued July 5, 2014, is HEREBY CANCELLED and is of no force or effect.

I HEREBY DISMISSES the Landlord'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: September 17, 2014

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Residential Tenancy Branch

