



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

OPR, MNR, CNR, CNC

### Introduction

This hearing was convened in response to cross applications.

The Landlord filed an Application for Dispute Resolution, in which the Landlord applied for an Order of Possession for Unpaid Rent and a monetary Order for unpaid rent. The Landlord stated that the Application for Dispute Resolution, the Notice of Hearing, and documents the Landlord wishes to rely upon as evidence were served to the Tenant, via registered mail, on August 18, 2014. The Tenant acknowledged receiving these documents.

The Tenant filed an Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Unpaid Rent and to set aside a Notice to End Tenancy for Cause. At the hearing the Tenant withdrew the application to cancel these Notices, as the rental unit is being vacated.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

### Preliminary Matter

The Landlord applied to amend the Application for Dispute Resolution to include unpaid rent from September and October of 2014. As it is reasonable for the Tenant to conclude that the Landlord is seeking compensation for all unpaid rent, including rent that has accrued since the Application for Dispute Resolution was filed, I find it reasonable to grant the application to amend the Application for Dispute Resolution to include unpaid rent from September and October of 2014.

### Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession and a monetary Order for unpaid rent?

### Background and Evidence

The Landlord and the Tenant agree that this tenancy began in 2013 and that the Tenant was required to pay monthly rent of \$700.00 by the first day of each month.

The Tenant contends that the Tenant/Occupant also had a verbal tenancy agreement with the Landlord. The Landlord stated that she knew the Tenant/Occupant was living in the rental unit, but he did not have the Landlord's permission to live in the unit.

The Landlord and the Tenant agree that no rent was paid for August, September, or October of 2014.

The Tenant stated that she has not lived in the rental unit since September 18, 2014 and that she understands the Tenant/Occupant still has some personal property in the rental unit. The Tenant/Occupant stated that he has not lived for approximately one week and that he still has some personal property in the rental unit and on the residential property.

The Landlord stated that a Ten Day Notice to End Tenancy for Unpaid Rent, which had a declared effective date of August 12, 2014, was mailed to the Tenant on August 02, 2014. The Tenant stated that she received this Notice on August 11, 2014.

The Tenant stated that she did not pay her rent for August because there was a serious rat and mice infestation in the rental unit. The Tenant stated that on July 15, 2014 she informed the Landlord that she would not be paying rent for August as a result of the infestation. The Tenant acknowledged that she did not file an Application for Dispute resolution seeking to reduce her rent as a result of a rodent infestation.

The Landlord stated that the rodent infestation was reported on June 28, 2014; that she hired a pest control company to address the problem; that the pest control company treated the problem on June 29, 2014 and July 01, 2014; and that the pest control company advised her that the problem was resolved on August 02, 2014.

The Tenant initially stated that she did not pay any money to address the rodent infestation. Later in the hearing she stated that she paid \$180.00 to purchase traps, although she did not submit receipts for those purchases.

The Tenant and the Tenant/Occupant both stated that the Landlord told them they did not have to pay rent for August. The Landlord stated that she did not tell either party that they would not have to pay rent for August.

The Tenant and the Tenant/Occupant both stated that the Landlord told them she was going to serve them with two months' notice to end the tenancy, although she did not serve them with a Two Month Notice to End Tenancy. The Landlord stated that she did tell the Tenant she may have to serve them with three months' notice to end the tenancy if the rodent problem required her to make extensive repairs but she did not serve notice to end the tenancy for this reason, as she did not conclude that extensive repairs were necessary.

### Analysis

On the basis of the undisputed evidence, I find that the Tenant entered into a tenancy agreement with the Landlord that required the Tenant to pay monthly rent of \$700.00 by the first day of each month. Section 26(1) of the *Residential Tenancy Act (Act)* requires tenants to pay rent to their landlord when it is due.

On the basis of the undisputed evidence, I find that the Tenant has not paid rent for August of 2014. As the Tenant is required to pay rent when it is due, pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$700.00 in rent to the Landlord.

If rent is not paid when it is due, section 46(1) of the *Act* entitles landlords to end the tenancy within 10 days, by providing proper written notice. On the basis of the undisputed evidence, I find that the Ten Day Notice to End Tenancy, served pursuant to section 46 of the *Act*, was mailed to the Tenant on August 02, 2014, and that she received it on August 11, 2014.

As the Tenant did not pay rent when it was due and the Landlord was served with proper notice to end the tenancy, pursuant to section 46 of the *Act*, I find that the Landlord has the right to end this tenancy. I therefore grant the Landlord's application for an Order of Possession.

As the Tenant did not vacate the rental unit on the effective date of the Notice to End Tenancy, I find that the Tenant is obligated to pay rent, on a per diem basis, for the days the Tenant remained in possession of the rental unit. As the Tenant has already been ordered to pay rent for the entire month of August, I find that the Landlord has been fully compensated for that month.

I also find that the Tenant must compensate the Landlord for the entire month of September of 2014, in the amount of \$700.00, as the Tenant remained in possession of the rental unit for that month.

I also find that the Tenant must compensate the Landlord for 14 days in October of 2014, as the rental unit has not yet been fully vacated, at a daily rate of \$22.58, which equates to \$316.12.

I decline to award compensation for rent for the entire month of October, as it is entirely possible that the rental unit will be fully vacated by today. The Landlord retains the right to file another Application for Dispute Resolution seeking additional compensation for loss of revenue/unpaid rent if the Tenant does not comply with the Order of Possession.

In determining this matter I have considered section 33 of the *Act*, which authorizes a tenant to withhold rent if they have made emergency repairs and provided receipts for those repairs. I find that, in some circumstances, a serious rodent infection could be considered an emergency repair.

Even if I determined that the rodent infection in these circumstances constituted an emergency repair, however, I find that the Tenant has submitted insufficient evidence to establish that she paid \$180.00 to purchase traps. In reaching this conclusion, I was heavily influenced by the absence of evidence, such as a copy of the receipt, that corroborates her testimony that these traps were purchased. As the Tenant has failed to establish that she purchased traps for \$180.00, I cannot conclude that she had the right to withhold any rent for this alleged purchase.

In determining this matter I note that I have placed little weight on the undisputed fact that there was a rodent infestation. Until the Tenant has authorization to reduce the rent as a result of the rodent infestation, the Tenant is obligated to pay rent when it is due even if there are deficiencies with the rental unit. As the Tenant did not file an Application for Dispute resolution seeking to reduce her rent as a result of the rodent infestation, she did not have the right to withhold any of the rent for that reason.

In determining this matter I have placed no weight on the Tenant's submission that the Landlord told her she did not have to pay rent for August of 2014. In reaching this decision I was heavily influenced by the absence of evidence that corroborates the Tenant and the Tenant/Occupant's testimony in this regard or that refutes the Landlord's testimony that she did not agree to waive the rent for August. In the absence of an agreement that rent was not due for August, I find that the Tenant remained obligated to pay rent in accordance with section 26 of the *Act*.

In determining this matter I have placed no weight on the Tenant's testimony that the Landlord told her that she was going to serve her with two months' notice to end the tenancy. I find that the Tenant remained obligated to pay rent when it was due until such time she was served with a Two Month Notice to End Tenancy, at which point she would be entitled to one month's free rent.

### Conclusion

I grant the Landlord an Order of Possession that is effective two days after it is served upon the Tenant. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

The Landlord has established a monetary claim, in the amount of \$1,716.12, for unpaid rent and I grant the Landlord a monetary Order for this amount. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia 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: October 14, 2014

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Residential Tenancy Branch

