



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding BAYSIDE PROPERTY SERVICES LTD.  
and [tenant name suppressed to protect privacy]

## DECISION

Dispute Codes      OPR MNR MNSD FF  
                                 CNR

### Preliminary Issues

Upon review of the Landlord's application for dispute resolution the Landlord wrote the following in the details of the dispute:

*The Tenant has once again paid only \$250 as of October 1, 2014 and a use and occupancy receipt only has been issued to the Tenant by the Building Manager. The total rental arrears is now \$695.00 [sic]*

Based on the aforementioned I find the Landlord had an oversight or made a clerical error in not selecting the box *for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement* when completing the application, as they clearly indicated their intention of seeking to recover the payment for occupancy after the effective date of the 10 Day Notice. Therefore, I amend the Landlord's application to include the request for *money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement*, pursuant to section 64(3)(c) of the Act.

### Introduction

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

The Landlord filed on October 1, 2014, to obtain an Order of Possession for unpaid rent and a Monetary Order for: unpaid rent or utilities; *money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement*; to keep all or part of the security deposit; and to recover the cost of the filing fee from the Tenant for this application.

The Tenant filed on September 4, 2014, to cancel a Notice to end tenancy issued for unpaid rent.

The Hearing was conducted by teleconference and was attended by two agents for the Landlord and the Tenant. Each party provided affirmed testimony.

At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally and respond to each other's testimony. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

#### Issue(s) to be Decided

1. Should the 10 Day Notice issued September 3, 2014 be cancelled or upheld?
2. If upheld, should the Landlord be granted an Order of Possession?
3. Has the Landlord proven entitlement to a Monetary Order?

#### Background and Evidence

It was undisputed that the Tenant began occupying the rental unit as of July 1, 2012 and the parties executed a subsequent written tenancy agreement that commenced on February 1, 2013. The market value rent began at \$401.00 per month and the Tenant pays a subsidized rental amount which is calculated each year. On or before July 1, 2012 the Tenant paid \$193.50 as the security deposit.

The Landlord submitted 64 pages of evidence which included, among other things, copies of: various subsidy application documents completed by the Tenant; proof of income documents submitted by the Tenant; the tenancy agreement; letters issued to the Tenant; payment ledgers, a 10 Day Notice; and the Landlord's written submission.

The Property Manager testified that when the Tenant first applied for subsidy in 2012 his rent was determined to be \$250.00 each month. On December 10, 2013, the Tenant completed his annual application for subsidy indicating that his rent would be increased to \$299.00 per month effective February 1, 2014.

The Property Manager argued that the Tenant failed to pay the increased amount of \$299.00 and continued to pay only \$250.00. In addition to not paying the increased

amount, the Landlords submitted that the Tenant's application for subsidy was denied by BC Housing as they requested additional proof of income from the Tenant. The Property Manager stated that they have attempted to assist this Tenant in submitting the required information; however, he continues to resubmit the same documents and does not submit the exact documents that were requested.

The Resident Manager testified that the Tenant has been sent nervous documents through the mail and she has spoken directly with this Tenant to try and resolve these matters, but to date the Tenant has not provided the required documents.

The Tenant testified and initially stated that he had never received any information in writing and he did not know that he was supposed to pay \$299.00 per month instead of \$250.00. Upon further clarification on how he acquired the documents that he submitted into evidence the Tenant changed his testimony and confirmed that he had previously received written requests or documents informing him about the status of his subsidy application for 2014.

The Tenant argued that he had not paid the \$299.00 per month and had not contacted the Landlord to make payment arrangements prior to receiving the 10 Day Notice because he was out of town when those documents were sent. He argued that he did not receive the August 25, 2014 letter from the Landlord until September 3, 2014. In closing, the Property Manager pointed out how the Tenant knew when he completed his application for subsidy on December 10, 2013, that his rent would increase at least to \$299.00. Therefore, there was no excuse why he had not paid the increased amount from \$250.00 to \$299.00. Given the circumstances presented at this hearing and when they consider that the next round of subsidy applications are only a few weeks away, the Property Manager stated that they wished to proceed with their application for an Order of Possession and Monetary Order as filed.

### Analysis

When a tenant receives a 10 Day Notice to end tenancy for unpaid rent they have (5) days to either pay the rent in full or to make application to dispute the Notice or the tenancy ends.

### **Landlord's Application**

In this case the Tenant received the 10 Day Notice on September 3, 2014 and filed an application to dispute the Notice. The effective date of the Notice was **September 13, 2014**, in accordance with section 90 of the Act.

The Tenant did not pay the required rent, the increased amount from \$250.00 to \$299.00 for the period of February 1, 2014 to August 31, 2014 and did not submit the required documentation for the final review of his subsidy application. The Tenant remains in the rental unit and paid \$250.00 towards use and occupancy only. 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 or their subsidy provider.

Based on the foregoing I find the Landlord has met the burden of proof and I grant the Landlord an Order of Possession, pursuant to section 55 of the Act.

The Landlord claimed accumulated unpaid rent of \$695.00 which is comprised of rent for the period of February 1, 2014 to September 1, 2014 plus use and occupancy of the unit from October 1 to October 31, 2014. I accept that the Tenant failed to pay rent in accordance with the tenancy and subsidy agreement which is a breach of section 26 of the Act. Accordingly, I award the Landlord a Monetary Award for unpaid rent and use and occupancy up to October 31, 2014, in the amount of **\$695.00**.

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 rent & Use & Occupancy to Oct. 31, 2014	\$695.00
Filing Fee	<u>50.00</u>
<b>SUBTOTAL</b>	\$745.00
<b>LESS:</b> Security Deposit \$193.50 + Interest 0.00	<u>-193.50</u>
<b>Offset amount due to the Landlord</b>	<b><u>\$551.50</u></b>

As noted above the Landlord has been granted payment for use and occupancy of the unit until October 31, 2014; therefore, the Order of Possession will be effective on October 31, 2014.

### **Tenant's Application**

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find the Tenant submitted insufficient evidence to have the 10 Day Notice issued September 3, 2014, cancelled. Accordingly, I dismiss the Tenant's application, without leave to reapply.

Conclusion

The Landlord has been granted an Order of Possession effective **October 31, 2014, at 1:00 p.m. after service 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 **\$551.50**. 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.

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 27, 2014

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Residential Tenancy Branch

