



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR OPC MNR FF  
                             CNC CNR

### Preliminary Issues

Upon review of the Landlord's application for dispute resolution the Landlords listed in the Details of the Dispute that they were seeking "rent owed for September and October Total \$1,700.00".

Based on the aforementioned I find the Landlords 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 she clearing indicated her intention of seeking to recover the payment for rent for a period after the effective date of the notice to end the tenancy. Therefore, I amend the 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 Landlords and the Tenant.

The Landlords filed on October 10, 2014, seeking an Orders of Possession for cause and unpaid rent or utilities and a Monetary Order for: unpaid rent or utilities; for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement; and to recover the cost of the filing fee from the Tenant for this application.

The Tenant filed on September 05, 2014, seeking an Order to cancel the Notices to end tenancy for cause and unpaid rent or utilities.

The hearing was conducted via teleconference and was attended by the Landlord C.S. who provided affirmed testimony that she would be representing both Landlords. Therefore, for the remainder of this decision, terms or references to the Landlords importing the singular shall include the plural and vice versa.

The Landlord submitted that the Tenant was served with copies of the Landlords' application for dispute resolution and Notice of dispute resolution hearing, on October

20, 2014, by registered mail. Canada Post tracking information was provided in the Landlord's testimony. Based on the submissions of the Landlord I find the Tenant was deemed served notice of this proceeding on August 25, 2014, five days after they were mailed, in accordance with section 90 of the Act.

No one appeared on behalf of the Tenant despite this hearing being convened to hear matters pertaining to the Tenant's application. Therefore, I proceeded in the Tenant's absence.

#### Issue(s) to be Decided

1. Should the Tenant's application be dismissed with or without leave to reapply?
2. Should the Landlords be issued an Order of Possession?
3. Should the Landlords be issued a Monetary Order?

#### Background and Evidence

The Landlord testified that they had signed a written tenancy agreement with the Tenant for a month to month tenancy that began on July 20, 2014. The Landlord stated that the Tenant told her that the Tenant was required to take the tenancy agreement to her welfare worker and that she would get it back, but the Tenant never returned it to them. As per their tenancy the Tenant is required to pay rent on or before the first of each month in the amount of \$850.00 and on July 18, 2014 the Tenant paid \$425.00 as the security deposit.

The Landlord submitted that on August 28, 2014, they personally served the Tenant with the 1 Month Notice for cause. Then the Tenant refused to pay her September 1, 2014 so on September 4, 2014, they posted a 10 Day Notice to end tenancy to her door. The Tenant removed it and ripped it up throwing it away. The Landlord submitted a copy of the torn up 10 Day Notice into her evidence and stated she wanted to proceed with the eviction and with her application as filed.

No evidence was submitted on behalf of the Tenant's application as no one was in attendance to represent the Tenant.

#### Analysis

Given the evidence before me, in the absence of testimony from the Tenant who did not appear despite this hearing being convened to hear matters for her own application, I accept the undisputed version of events as discussed by the Landlord and corroborated by their evidence.

The Tenant was issued a 1 Month Notice on August 28, 2014 with an effective date of September 30, 2014, and a 10 Day Notice was issued September 4, 2014, with an effective date of September 14, 2014.

Section 61 of the *Residential Tenancy Act* states that upon accepting an application for dispute resolution, the director must set the matter down for a hearing and that the Director must determine if the hearing is to be oral or in writing.

Rule 10.1 of the Rules of Procedure provides as follows:

**10.1 Commencement of the hearing** The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

In the absence of the applicant Tenant, the telephone line remained open while the phone system was monitored for 11 minutes and no one on behalf of the applicant Tenant called into the hearing during this time. Accordingly, in the absence of any submissions from the applicant Tenant, I order the Tenant's application dismissed without liberty to reapply.

Section 55 of the Act provides that an Order of Possession **must** be provided to a Landlord if a Tenant's request to dispute a Notice to End Tenancy is dismissed and the Landlord makes an oral request for an Order of Possession during the scheduled hearing. Accordingly, I award the Landlords an Order of Possession.

The Landlords claimed for unpaid rent of \$850.00 for September 1, 2014, pursuant to section 26 of the *Act* which stipulates a tenant must pay rent when it is due. I find that the Tenant has failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. Therefore, I find that the Landlord has proven the test for loss as listed above and I hereby approve their claim for unpaid September 2014 rent in the amount of **\$850.00**.

As noted above this tenancy ended on the earlier of the two effective dates which was **September 14, 2014**, in accordance with the 10 Day Notice. Therefore I find the Landlords are seeking money for use and occupancy of the unit and not rent for October 2014. The Tenant has continues to occupy the unit; therefore, the Landlord is entitled to payment for use and occupancy for the entire month of October 2014 in the amount of **\$850.00**.

The Landlords have succeeded with their application; therefore, I award recovery of the **\$50.00** filing fee.

### Conclusion

The Tenant's application is HEREBY DISMISSED, without leave to reapply.

The Landlords have been granted an Order of Possession effective **Two (2) Days 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 Landlords have been awarded a Monetary Order for **\$1,750.00** (\$850.00 + \$850.00 + \$50.00). 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 30, 2014

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Residential Tenancy Branch

