



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding ANSLEL HOLDINGS LTD o/a GAMMON INTERNATIONAL  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR OPC MND MNR MNSD MNDC FF  
                             CNR CNC MNDC PSF LAT RR

### Preliminary Issues

Residential Tenancy Rules of Procedure, Rule 2.12 states that the issues identified in the cross application must be related to the issues identified in the application being countered or responded to.

Upon review of the Tenant's application I have determined that I will not deal with all the dispute issues the Tenant has placed on their application. For disputes to be combined on an application they must be related. Not all the claims on this application are sufficiently related to the main issue relating to the Notices to end tenancy. Therefore, I will deal with the Tenant's request to set aside, or cancel the Landlord's Notices to End Tenancy issued for unpaid rent and cause; and I dismiss the balance of the Tenant's claim with leave to re-apply.

Upon review of the Landlord's application, the Landlord stated that they wished to withdraw their request to keep the security deposit at this time, as they have not regained possession of the unit and do not know the full extent of the damage or loss.

On a procedural note, during this proceeding the Tenant, M.B. continued to interrupt me and attempted to engage in arguments. M.B. confirmed on two separate occasions that she would not interrupt the hearing and when she interrupted a third time her telephone was put on mute at 10:07 a.m. for the remaining twelve minutes of the hearing, to prevent further interruptions.

### Introduction

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

The Landlord filed their application on September 16, 2014, listing both Tenants as respondents. The Landlord applied to obtain Orders of Possession for Cause and for Unpaid Rent; and a Monetary Order for: damage to the unit, site or property; for unpaid rent or utilities; to keep all or part of the security deposit; 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 Tenants for this application.

Only one Tenant (A.D.) is listed as applicant on the Tenant's application which was filed on August 25, 2014 and amended on September 8, 2014. As noted above, this hearing dealt with the Tenant's request to cancel the Notices to end tenancy issued for Cause and Unpaid Rent and the remainder of his application was dismissed with leave to reapply.

The hearing was conducted via teleconference and was attended by two agents for the Landlord and both Tenants. Each person gave affirmed testimony and confirmed receipt of evidence served by the Landlord. The Tenants affirmed that they did not serve evidence to the Landlord; however, they did serve the Landlord with the *Residential Tenancy Branch* documents.

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, respond to each other's testimony, and to provide closing remarks. 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 1 Month Notice to end tenancy issued August 20, 2014 be upheld or cancelled?
2. Should the 10 Day Notice to end tenancy issued September 4, 2014 be upheld or cancelled?
3. If either Notice is upheld, has the Landlord proven entitlement to an Order of Possession?
4. Has the Landlord proven entitlement to a Monetary Order?

#### Background and Evidence

It was undisputed that the parties executed a written tenancy agreement for a fixed term tenancy that commenced on May 22, 2014 and is scheduled to end on November 30, 2014. The Tenants are required to pay rent of \$650.00 and on May 22, 2014, the Tenants paid \$325.00 as the security deposit.

Both parties referenced a previous hearing that was conducted on July 10, 2014 to hear the Tenants' application to dispute a previously issued 1 Month Notice to end tenancy.

The Tenants were successful with that application and the 1 Month Notice that was issued in May 2014 was set aside.

In support of their application, the Landlord submitted, among other things, a volume of evidence which included copies of the following: a written summary of events; the tenancy agreement; a 10 Day Notice issued September 4, 2014; a 1 Month Notice issued August 20, 2014; a chronological list of events relating to complaints from other tenants and police attendance; copies of written complaints from other tenants; incident reports; photos of damages to the rental unit door and locks; warning letters/memos issued to the Tenants on July 22, 2014 and August 20; and a receipt dated October 1, 2014 indicating the payment for October was received for use and occupancy only and noting that \$325.00 was still outstanding from September 2014.

The 1 Month Notice was issued August 20, 2014, pursuant to Section 47(1) of the Act for the following reasons:

- Tenant or a person permitted on the property by the tenant has:
  - Significantly interfered with or unreasonably disturbed another occupant or the landlord
  - Put the Landlord's property at significant risk

The 10 Day Notice was issued September 4, 2014 for \$325.00 unpaid rent that was due on September 1, 2014.

The Landlord testified that both Notices to end tenancy were posted on the Tenants' door. The Landlord summarized her written submissions as proof that the Tenants have disturbed other tenants and the Landlord by their constant fighting and domestic disputes inside the rental unit and out in the hallway. She argued that the Tenants have damaged the Landlord's property by breaking into the unit damaging the locks and the door. She noted that her evidence supports that several of the documented disturbances occurred between the hours of 11:00 p.m. and 7:00 a.m.

The Landlord submitted that other tenants have moved out as a result of the disturbances and she has been told that more tenants will be giving her their notice if these Tenants remain in the unit. She submitted that the domestic disputes have continued, despite the warning letters and eviction notices being served and on Friday October 17, 2014 the male Tenant was arrested. The Landlord stated that the police contacted the building manager to advise him that the Tenant had been arrested and was issued a no contact order.

The Manager testified and confirmed that he received a call from the police advising him that the male Tenant had been arrested and the police requested that the Landlord change the locks on the rental unit to protect the female Tenant. The Manager submitted that the police told him to call the police if he saw the male Tenant within 100 feet or 100 yards of the rental property.

The Landlord testified that the security deposit and all rent payments have been mailed directly to her by the male Tenant's father. The Landlord stated that the male Tenant's father would always communicate with her, either by email or by phone, to let her know payment was on its way. She noted that the September 2014 payment was only \$325.00, half of the \$650.00 rent and that the male Tenant's father told the Landlord that he was only paying his son's portion and nothing for the female Tenant for September and that she would be responsible to pay her own rent.

The Male Tenant testified first and confirmed that he has had disagreements with his girlfriend, the Female Tenant. He argued that they are both strong minded, have strong characters, and when they are expressing their positions they do have heated conversations. The Male Tenant stated that he took offense to his conversations being referenced as domestic disputes and argued that they occur primarily during the daytime and not after 11:00 p.m. He argued that there was no law against having a loud conversation during the daytime.

The Male Tenant confirmed that he was arrested on October 17, 2014 for being in a dispute with the Female Tenant. He stated that he was issued a no contact order and clarified that he was calling into this proceeding from a different location than where the Female Tenant was calling from.

The Male Tenant stated that sometime in early September a key was broken in their lock so they asked the Manager to change his lock. The Manager failed to change the lock for over two weeks and when he did change it he did not give a key to the Female Tenant. So when she came home she broke into the rental unit.

The Female Tenant testified that she paid her share of the September 2014 rent on the last Thursday of August 2014, by putting \$325.00 cash into the mail slot on the Manager's door. She confirmed that all previous rent had been paid by the Male Tenant's father and argued that she did not want his father controlling her money anymore so she decided to pay her rent on her own for the month of September. She stated that she did not have proof of this payment because the Manager refused to give her a receipt for the payment. She confirmed that the Male Tenant's father paid her rent for October.

The Female Tenant stated that she has had fights off and on with the Male Tenant during which she yells. She stated that she has problems hearing which causes her to yell when she is in a dispute. She confirmed that on October 17, 2014 she was having a disagreement with the Male Tenant and the police just happened to be arresting someone else in the neighbourhood and heard their fight so they attended and arrested the Male Tenant.

The Manager confirmed that he changed the Tenants' lock in early September after he was told it was damaged. He said the Male Tenant told him he would come by and pick up a key after he finished work and the Male Tenant instructed the Manager not to give a key to the Female Tenant. When the Female Tenant arrived home she broke the lock to get into the unit.

### Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

Upon review of the 1 Month Notice and the 10 Day Notice to End Tenancy, I find each Notice to be completed in accordance with the requirements of section 52 of the Act and I find that they were served upon the Tenants in a manner that complies with section 89 of the Act.

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove the tenancy should end for the reason(s) indicated on the Notice. Where more than one reason is indicated on the Notice the landlord need only prove one of the reasons. The burden of proof is based on the balance of probabilities, meaning the events as described by one party are more likely than not.

Although the Tenants have denied the allegations of disturbances occurring after 11:00 p.m., I find those denials self-serving and unreliable. It was undisputed that the Tenants have engaged in arguments during daytime hours. I find the written complaints, incident reports, chronological list of events, and police file numbers, when considered collectively, are far more compelling than the Tenants' denials of the time of day the disturbances occurred. Although the witnesses are reporting events that clearly indicate disruptive disputes, the evidence collectively proves a pattern of behaviour that, in my view, is unreasonable.

In light of the above, I find the landlord has satisfied me that the Tenants or a person permitted on the property by the Tenants has significantly interfered with or unreasonably disturbed another occupant or the landlord. Therefore, I uphold the 1 Month Notice to End Tenancy based upon this reason and I dismiss the tenant's application for cancellation of the Notice. Accordingly, I grant the Landlord's application for an Order of Possession.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

In this case, the Tenants have the burden to prove the September 2014 rent has been paid in full. Accordingly, the only evidence before me was disputed verbal testimony which is insufficient to meet the Tenants' burden of proof. Accordingly, I find that the Tenants have a balance due for September 2014 rent of **\$325.00** and I grant the Landlord a Monetary Order.

As noted above, the Landlord has been granted an Order of Possession for Cause. Therefore, there is no need to issue a second Order of Possession for unpaid rent.

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

### Conclusion

The Landlord has been granted an Order of Possession effective **Two (2) Days after service upon the Tenants**. In the event that the Tenants do 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 **\$375.00** (\$325.00 + 50.00). This Order is legally binding and must be served upon the Tenants. In the event that the Tenants do 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.

I HEREBY DISMISS the Tenant's application to cancel Notices to end tenancy, without leave to reapply. The remainder of the Tenant's application was dismissed, with leave to reapply, as noted in the preliminary issues above.

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 21, 2014

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Residential Tenancy Branch