



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR MNR MNSD MNDC FF  
                             CNR MNDC ERP RP PSF RR O

### 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 Notice to end tenancy. Therefore, I will deal with the Tenant's request for more time to make her application and to set aside or cancel the Landlord's Notice to End Tenancy issued for unpaid rent; and I dismiss the balance of the Tenant's claim with leave to re-apply.

### Introduction

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

The Landlord filed on September 23, 2014, seeking an Order of Possession for unpaid rent and a Monetary Order 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 Tenant for this application.

The Tenant filed on September 24, 2014, seeking an Order to cancel the notice to end tenancy.

The hearing was conducted via teleconference and was attended by the Landlord, his Agent, the Tenant, and the Tenant's witness. At the outset of the proceeding I instructed the Tenant's witness to exit the area where the Tenant was until such time as he was

called to testimony, pursuant to the *Residential Tenancy Branch Rules of Procedure*. Given the Nature of this dispute I did not call the Tenant's Witness to provide testimony.

The parties gave affirmed testimony and confirmed receipt of evidence served by the Tenant. 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 10 Day Notice be upheld or cancelled?
2. If upheld, should the Landlord be granted an Order of Possession?
3. Is the Landlord entitled to a Monetary Order?

#### Background and Evidence

It was undisputed that the parties executed a written tenancy agreement for a month to month tenancy that commenced on December 15, 2013. The Tenant was required to pay rent of \$750.00 on the first of each month.

The Tenant testified that she had paid \$375.00 as the security deposit and she had received the 10 Day Notice on September 9, 2014 indicating rent of \$1,450.00 was outstanding that was due on September 1, 2014.

The Tenant submitted that she had attempted to work things out with the Landlord and was trying to give the Landlord \$35.00 as payment for rent until she was able to find a job but the Landlord demanded the full amount of rent and refused to put anything in writing. She stated that she delayed in filing her application to cancel the Notice because she was calling everyone such as advocates and Income Assistance to seek guidance.

The Landlord's Agent argued that only \$350.00 had been received as the security deposit. He initially stated that rent for September, October and November 2014 remained unpaid and then in closing he noted that August 2014 was not paid.

The Tenant did not dispute the fact that she had not paid rent for several months and confirmed that she has continued to reside in the rental unit.

### Analysis

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.

It was undisputed that rent of 4750.00 is due on the first of each month and the Tenant has not paid rent for August or September in the amount of \$1,450.00. In the presence of disputed testimony I accept the Landlord's version that the Tenant only paid \$350.00 towards the security deposit.

Section 66 of the *Residential Tenancy Act* allows for an extension to a time limit established by the *Act* but only in exceptional circumstance. The reasons given by the Tenant on why she did not apply within the prescribed timeframes do not constitute exceptional circumstances. Therefore, I dismiss the Tenant's application without leave to reapply.

Based on the above, I find that the Landlord has met the requirements for the 10 day notice to end tenancy pursuant to section 46(1) of the *Act*, and effective date of the Notice was **September 19, 2014**. The Tenant failed to pay the rent within 5 days after receiving this notice and she failed file her application within the required 10 days. Accordingly, I approve the Landlord's request for an Order of Possession.

The Landlord claims for unpaid rent of \$1,450.00 that was due September 1, 2014, pursuant to section 26 of the *Act* a tenant must pay rent when it is due in accordance with the tenancy agreement. Accordingly, I grant the Landlord a Monetary Order for **\$1,450.00**.

As noted above this tenancy ended September 19, 2014, in accordance with the 10 Day Notice therefore I find the Landlord is seeking loss of rent for October and November 2014. The Tenant is still occupying the unit and the Landlord will not regain possession of the unit until after service of the Order of Possession will have to ready the unit and find new tenants. The Landlord has the obligation to re-rent the unit for as soon as possible, therefore I grant the Landlord loss of rent from October 1, 2014 to November 15, 2014, in the amount of **\$1,125.00** (\$750.00 + \$375.00).

The Landlords have 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 August and September 2014	\$1,450.00
Loss of Rent October 1 – November 15, 2014	1,125.00
Filing Fee	<u>50.00</u>
<b>SUBTOTAL</b>	<b>\$2,625.00</b>
<b>LESS:</b> Security Deposit \$350.00 + Interest 0.00	<u>-350.00</u>
<b>Offset amount due to the Landlord</b>	<b><u>\$2,275.00</u></b>

### Conclusion

The Landlord has 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 Landlord has been awarded a Monetary Order for **\$2,275.00**. 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.

I HEREBY DISMISS the Tenant's application for more time and to cancel the 10 Day Notice, 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: November 06, 2014

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Residential Tenancy Branch

