



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

OPR, MNR

### Introduction

This hearing was the subject of a Direct Request Proceeding on September 17, 2014, at which time the Landlord was granted an Order of Possession.

On September 23, 2014 the Tenant filed an Application for Review Consideration. On October 03, 2014 an Arbitrator considered the application for review and determined that a new hearing should be convened.

This review consideration hearing was convened to consider the merits of the Landlord's original Application for Direct Request, in which the Landlord applied for an Order of Possession.

Although the Landlord did not "select" the request for a monetary Order, he did indicate that he is requesting a monetary Order in the amount of \$2,127.00 and he did submit a Monetary Order Worksheet in which he indicated he is making a monetary claim in this amount. At the outset of this participatory hearing the Tenant stated that he understood the Landlord was seeking compensation for unpaid rent, although he did not believe additional rent was owed. On the basis of the information provided on the Application for Direct Request Proceedings and the Tenant's acknowledgement that he understood the dispute was regarding a claim for unpaid rent, in the amount of \$2,127.00, I find it reasonable to consider the Landlord's claim for unpaid rent at these proceedings, even though they were not considered at the direct request proceeding.

Both parties were represented at the hearing on November 19, 2014. They were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

The Landlord and the Tenant agree that the Application for Direct Request and evidence the Landlord wishes to rely upon as evidence were mailed to the rental unit on August 29, 2014. The Tenant cannot recall when the documents were received. As the Tenant acknowledged receipt of these documents, they were accepted as evidence for these proceedings.

The Respondent stated that he personally served Review Consideration Decision, the Notice of Hearing for this hearing; and documents the Tenant wishes to rely upon as evidence to the Landlord's daughter, although he cannot recall the date of service. As the Landlord acknowledged receipt of these documents, they were accepted as evidence for these proceedings.

On October 17, 2014 the Tenant submitted photographs to the Residential Tenancy Branch, which the Tenant wishes to rely upon as evidence. The Respondent stated that these documents were personally served to the Landlord on October 17, 2014. The Landlord acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

#### Preliminary Matter

The Landlord applied to amend the Application for Direct Request Proceeding to reflect the spelling of the name of Tenant, as was provided by that party at the hearing. The Tenant did not oppose the request and the Application was amended accordingly.

#### 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 he and two other males moved into the rental unit in May of 2013, and that they all signed a tenancy agreement. A copy of the agreement was submitted in evidence, which indicates that rent of \$1,250.00 is due by the first day of each month.

The Landlord and the Tenant agree that one of the males who signed the tenancy agreement moved out in January of 2014 and the other moved out in February of 2014. He stated that neither he, nor any of the other males who signed the tenancy agreement, ever gave the Landlord notice that the tenancy was ending.

The Landlord stated that when the other two males named on the written tenancy agreement moved out the Tenant told him he would try to find roommates to share the rent. The Landlord stated that it was his understanding that the rent of \$1,250.00 would continue to be paid.

The Landlord and the Tenant agree that all parties agreed that the Respondent could move into the rental unit with the Tenant. The parties agree that the Respondent moved into the rental unit in April of 2014.

The Tenant and the Respondent stated that they told the Landlord they would pay rent of \$417.00 each. The Landlord stated that he understood that the Respondent would be paying \$417.00 in rent and that they would either find another roommate or jointly pay the remaining rent.

At the hearing the Landlord and the Tenant agree that only \$834.00 in rent has been paid for March of 2014; \$834.00 in rent has been paid for April of 2014; \$834.00 in rent has been paid for May of 2014; \$834.00 in rent has been paid for June of 2014; \$834.00 in rent has been paid for July of 2014; and \$834.00 in rent has been paid for August of 2014.

The Landlord submitted a Monetary Order Worksheet that declares that \$417.00 is owed for the month March of 2014; \$417.00 is owed for the month of April of 2014; \$42.00 is owed for the month May of 2014; \$417.00 is owed for the month June of 2014; \$417.00 is owed for the month July of 2014; and \$417.00 is owed for the month August of 2014.

The Respondent argued that they should not be responsible for the full rent because when one of the tenants named on the tenancy agreement moved out, his bedroom was left in an unclean condition so they were unable to find a third roommate. The Tenant contends that the room should have been cleaned by the Landlord.

The Landlord stated that a Ten Day Notice to End Tenancy for Unpaid Rent was personally served to the Respondent on August 10, 2014. The Respondent stated that he believes he received this Notice on August 11, 2014. The Tenant stated that the Respondent showed him the Notice on August 11, 2014. The parties agree that this Notice declared the Tenants and the Respondent must vacate the rental unit by August 20, 2014.

The Respondent stated that the Notice to End Tenancy was disputed but he cannot recall the date that he filed an Application for Dispute Resolution, in which he disputed the Notice. The Respondent was unable to provide a file number to corroborate his claim that he filed an Application for Dispute Resolution.

### Analysis

On the basis of the undisputed testimony and the tenancy agreement submitted in evidence. I find that the Tenant and two other males entered into a written tenancy agreement, for which they agreed to pay \$1,250.00 in monthly rent. On the basis of the undisputed evidence, neither party ended this tenancy in accordance with section 45 of the *Residential Tenancy Act (Act)*. I therefore find that the Tenant and the two other males who signed this agreement remained obligated to pay the rent.

A term of a tenancy agreement may only be amended if the landlord and the tenant agree to the amendment. I find that the Tenant submitted insufficient evidence to show

that the Landlord agreed to amend the amount of rent that was due at the first day of each month. I therefore find that the Tenant and the two other males who signed this agreement remained obligated to pay monthly rent of \$1,250.00.

Although I am satisfied that the Tenant and the Respondent truly believed that they were only each responsible for paying \$417.00 in rent, I find the Tenant has misunderstood his obligations under the tenancy agreement.

On the basis of the undisputed testimony, I find that only \$5,004.00 has been paid in rent for the period between March 01, 2014 and August 31, 2014. Although this is not consistent with the documentary evidence provided by the Landlord, I find the testimony to be more reliable than the documentary evidence, as the parties agreed to these amounts at the hearing.

As the Tenant was obligated to pay \$7,500.00 in rent for the period between March 01, 2014 and August 31, 2014 and only \$5,004.00 was paid, I find that the Tenant still owes \$2,496.00 in rent for these months. As the Landlord has only claimed compensation of \$2,127.00 in rent for these months, I grant the full amount of his claim. I am unable to award compensation for the full amount of rent I determined was due, as I am unable to grant compensation that is greater than the amount claimed.

I note that I am unable to grant a monetary Order that names all three of the parties named on the tenancy agreement, as the Landlord is only claiming compensation from one of those parties. As the parties named on the tenancy agreement are jointly and severally liable, the Landlord has the right to collect from any or all of those parties.

I note that I am unable to grant a monetary Order that names the Respondent, as there is insufficient evidence to show that he agreed to pay any more than the \$417.00 per month and that he did pay that amount during his occupancy.

The Landlord retains the right to file another Application for Dispute Resolution seeking compensation for unpaid rent for any period after August 31, 2014.

In determining that rent was due, I have placed no weight on the argument that the Tenant was unable to find another roommate because one of the tenants named on the tenancy agreement left his room in an unclean condition when he moved. I note that it is the tenant, not the landlord, who is responsible for keeping the rental unit in reasonably clean condition. This includes cleaning the bedroom of a co-tenant if the co-tenant moves out of the unit.

On the basis of the undisputed evidence, I find that the Tenant had received the Ten Day Notice to End Tenancy by August 11, 2014.

Section 46(4) of the *Act* stipulates that a tenant has five days from the date of receiving the Notice to End Tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice to End Tenancy. In the circumstances before

me I find that the Tenant exercised neither of these rights and, pursuant to section 46(5) of the *Act*, I find that the Tenant accepted that the tenancy ended on August 20, 2014. I therefore find that the Landlord is entitled to an Order of Possession that names the Tenant and the Respondent, as they are both currently occupying the rental unit.

In reaching the conclusion that the Tenant did not file an Application for Dispute Resolution to dispute the Notice to End Tenancy, I was heavily influenced by the absence of evidence to corroborate the Respondent's claim that one was filed and by the fact I was unable to find a record of such an application in RTB records.

I find that the Landlord's application has merit, and I find that the Landlord is entitled to recover the filing fee from the Tenant for the cost of this Application.

### 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. This Order replaces the Order of Possession that was granted by Mr. Lam on September 17, 2014, only because it reflects the correct spelling of the Tenant's name.

I find that the Landlord has established a monetary claim against the Tenant, in the amount of \$2,177.00, which is comprised of \$2,127.00 in unpaid rent and \$50.00 in compensation for the fee for filing this Application for Dispute Resolution, 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: November 19, 2014

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Residential Tenancy Branch