



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, CNR, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent, pursuant to section 67;
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72.

This hearing also dealt with the tenant's cross-application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's two 10 Day Notices to End Tenancy for Unpaid Rent, dated November 4 and 13, 2014 ("two 10 Day Notices"), pursuant to section 46;
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The landlord's agent ("landlord") and the tenant attended the hearing and were each given a full opportunity to be heard, to present their sworn testimony, to make submissions and to call witnesses. The landlord's agent testified that he had authority to represent the landlord at this hearing, speak on his behalf and settle any matters with respect to this dispute.

The landlord testified that the first 10 Day Notice, dated November 4, 2014, was served upon the tenant, by leaving a copy on the counter in the secure lobby of the tenant's rental building. The tenant confirmed receipt of this first 10 Day Notice. The landlord testified that he served the tenant with the second 10 Day Notice, dated November 13, 2014, by registered mail. He provided a Canada Post receipt and tracking number as proof of service with his application. The landlord testified that he served this second 10 Day Notice because he was advised to do so by the Residential Tenancy Branch,

as he did not have a witness when he left the first 10 Day Notice for the tenant. In accordance with sections 88 and 90 of the Act, I find that the tenant was served with both 10 Day Notices, as declared by the parties, above.

The landlord testified that he served the tenant with his application for dispute resolution hearing package ("Landlord's Application") on November 27, 2014, by way of registered mail. He provided a Canada Post receipt and tracking number as proof of service with his Application. The tenant testified that he did not receive the Landlord's Application. In accordance with sections 89 and 90 of the Act, I find that the tenant was deemed served with the Landlord's Application on December 2, 2014, the fifth day after its registered mailing.

The tenant testified that he served the landlord with his application for dispute resolution hearing package ("Tenant's Application") on November 10, 2014, by way of registered mail. He provided a Canada Post receipt and tracking number as proof of service with his Application. The landlord testified that he received the Tenant's Application. In accordance with sections 89 and 90 of the Act, I find that the landlord was served with the Tenant's Application as declared by the parties.

During the hearing, the landlord withdrew his application for a monetary order for unpaid rent and to recover the filing fee from the tenant. During the hearing, the tenant withdrew his application to recover the filing fee from the landlord. Accordingly, these portions of both applications, are withdrawn.

The hearing proceeded on the remaining issue of whether the landlord's 10 Day Notice should be cancelled and if not, whether the landlord was entitled to an order of possession against the tenant.

#### Issue(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

#### Background and Evidence

The landlord testified that this tenancy began on February 15, 2012, for a fixed term ending on February 28, 2015, after which it would revert to a month to month tenancy. Monthly rent in the amount of \$2,950.00 is payable on the first day of each month. A security deposit of \$1,475.00 was paid by the tenant on February 5, 2012. The tenant continues to reside in the rental unit.

The landlord was initially seeking \$12,650.00 in unpaid rent from the tenant. The landlord confirmed during the hearing that he received \$6,000.00 from the tenant on December 5, 2014, \$6,000.00 on December 9, 2014 and \$650.00 on December 10, 2014, totalling \$12,650.00. The landlord testified that the tenant's rent, up to and including December 31, 2014, was fully paid. The tenant testified that he had paid for repairs totalling \$200.00 during this tenancy, but that he was no longer seeking this from the landlord.

### Analysis

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

The landlord and tenant agreed to the following final and binding settlement of all issues currently under dispute at this time:

1. The tenant agreed to pay the landlord \$2,950.00 by December 31, 2014 in order to continue this tenancy, as a pre-payment of one additional month's rent, to be applied to future rental amounts for this tenancy, if applicable, and as agreed upon by the parties as per #5 below;
2. The tenant agreed to pay the landlord an additional \$2,950.00 for January 2015 rent, by December 31, 2014;
3. If the tenant does not pay the above total amount of \$5,900.00 by December 31, 2014, both parties agreed that this tenancy will end by 1:00 p.m. on January 15, 2015, by which time the tenant will have vacated the rental unit;
4. If the tenant pays the above total amount of \$5,900.00 by December 31, 2014, this tenancy will continue on a month to month basis until it is ended in accordance with the *Act*, after the fixed term tenancy outlined in the tenancy agreement expires on February 28, 2015;
5. The tenant's \$2,950.00 pre-payment of one additional month's rent as per #1 above, is to be returned to the tenant at the end of this tenancy unless the landlord and tenant both agree that all or a portion of the amount is to be applied to outstanding rental arrears owed by the tenant during the remainder of this tenancy.

These particulars comprise the full and final settlement of all aspects of this dispute for both parties. Both parties verbally confirmed that they understood and agreed to the above terms as a final, binding settlement of all issues currently under dispute in this application. The landlord's agent confirmed that he had authority to settle this matter on behalf of the landlord and that he understood that the landlord would be bound by the above settlement.

### Conclusion

To give effect to the settlement reached between the parties, I issue the attached Order of Possession to be used by the landlord **only** if the tenant fails to abide by the monetary terms of the above agreement **and** fails to vacate the rental premises by 1:00 p.m. on January 15, 2015. The landlord is provided with this Order in the above terms and the tenant must be served with this Order in the event that the tenant does not abide by the above agreement. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The landlord's application for a monetary order for unpaid rent and to recover the filing fee from the tenant, is withdrawn.

The tenant's application to recover the filing fee from the landlord, is withdrawn.

The landlord's two 10 Day Notices, dated November 4 and 13, 2014, are cancelled and of no force and effect. The order of possession issued above, is to implement the settlement between the parties and is not issued on the basis of the two 10 Day Notices.

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: December 19, 2014

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Residential Tenancy Branch

