



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      For the landlord: OPR, MNR, MNDC, FF  
For the tenant: CNR, MT

### **Introduction**

This hearing was convened as the result of the cross applications of the parties for dispute resolution seeking remedy under the Residential Tenancy Act (the “Act”).

The landlord applied for an order of possession for the rental unit due to unpaid rent, a monetary order for money owed or compensation for damage or loss and unpaid rent, and for recovery of the filing fee.

The tenant applied for an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”) and for an order granting more time to make an application to cancel a notice to end tenancy.

The landlords, their agent/son (hereafter “landlord”), and the tenant attended the hearing. At the beginning of the hearing, neither party raised any issue regarding the service of the other’s application or evidence.

The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties were provided the opportunity to present their evidence orally, refer to documentary evidence submitted prior to the hearing, respond to the other’s evidence, and make submissions to me.

I have reviewed the oral and written evidence of the parties before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

### **Issue(s) to be Decided**

Are the landlords entitled to an order of possession for the rental unit due to unpaid rent, monetary compensation, and to recover the filing fee?

Is the tenant entitled to an order cancelling the Notice and for an order granting more time to make an application to cancel a notice to end tenancy?

### Background and Evidence

There was no written tenancy agreement; the landlord submitted that the tenancy began approximately 17-18 years ago and the tenant submitted that the tenancy began in August 1996. The parties agreed that monthly rent was \$600, payable on the first day of the month.

Pursuant to the Rules of Procedure, the landlord proceeded first in the hearing to explain or support the Notice to End Tenancy.

### **Landlord's application-**

The landlord stated that the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent on November 7, 2014 by attaching it to the tenants' door, listing unpaid rent of \$1500 as of November 1, 2014. The effective move-out date listed was November 20, 2014.

The Notice informed the tenant that he had 5 days of receipt of the Notice to file an application for dispute resolution with the Residential Tenancy Branch ("RTB") to dispute the Notice or to pay the rent in full; otherwise the tenant is conclusively presumed to have accepted that the tenancy is ending and must move out of the rental unit by the effective move-out date listed on the Notice.

The landlord asserted that since the issuance of the Notice, they have not received any rent payments and that through the date of the hearing, the tenant owed \$2100, which included unpaid rent for December 2014, as claimed in their application.

In response to my question, the landlord submitted that the unpaid rent listed on the Notice was comprised of a rent deficiency of \$300 for September and unpaid rent of \$600 for both October and November.

### *Tenant's response-*

The tenant claimed that he paid the landlord full rent for September, as he made two separate cash payments of \$300, and had no receipts as the parties never conducted the tenancy in that manner during the long term tenancy. The tenant confirmed not paying rent for October, November, and December 2014.

### Analysis

#### **Landlord's Application:**

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so.

Where a tenant fails to pay rent when due, the landlord may serve the tenant with a 10 Day Notice for Unpaid Rent, pursuant to section 46 of the Act. Upon receipt of the 10 Day Notice, the tenant must pay the outstanding rent or dispute the Notice within five days. In the case before me, I find the landlords submitted sufficient oral and documentary evidence that the tenant owed the landlords rent when the Notice was issued and that he did not pay all of the rent owed to the landlord within five days of receiving the Notice.

Therefore, I find the tenancy has ended due to the tenant's failure to pay rent and the landlords are entitled to regain possession of the rental unit.

I find that the landlords are entitled to and I therefore grant an order of possession for the rental unit effective 2 days after service upon the tenant.

I find the landlords submitted sufficient evidence that the tenant owed the amount of \$2100 for unpaid rent through December 2014 as I accept their evidence that the tenant failed to pay the full amount of rent owed for September 2014. The tenant failed to produce any proof that he had paid another cash payment of \$300, such as with a bank withdrawal or any other records.

I grant the landlords recovery of their filing fee of \$50 paid for this application.

I therefore find that the landlords are entitled to a monetary award in the amount of \$2150, comprised of outstanding rent of \$2100 through December 2014 and the \$50 filing fee paid by the landlords for this application.

### **Tenant's application:**

Due to the above, the tenant's application for dispute resolution seeking a cancellation of the Notice is dismissed without leave to reapply as I find the 10 Day Notice to End Tenancy issued by the landlords has been supported by the landlords and is therefore valid and enforceable.

### **Conclusion**

The landlords' application has been granted.

I grant the landlords a final, legally binding order of possession for the rental unit, which is enclosed with the landlords' Decision. Should the tenant fail to vacate the rental unit pursuant to the terms of the order after it has been served upon him, this order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court. The tenant is advised that costs of such enforcement are recoverable from the tenant.

I grant the landlords a final, legally binding monetary order for the amount of their monetary award of \$2150 pursuant to section 67 of the Act, which is enclosed with the landlords' Decision.

Should the tenant fail to pay the landlords this amount without delay after the order has been served upon him, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an order of that Court. The tenant is advised that costs of such enforcement are recoverable from the tenant.

The tenant's application is dismissed, 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: December 17, 2014

---

Residential Tenancy Branch

