



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Suns Rivers Holding Corp.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPL, MNR, MNDC, MNSD, FF, CNL, RR

### Introduction

There are applications filed by both parties. The landlord seeks an order of possession as a result of a notice to end tenancy issued for landlord's use, a monetary order for unpaid rent or utilities, for money owed or compensation for damage or loss, to keep all or part of the security deposit and recovery of the filing fee. The tenants seek an order cancelling the notice to end tenancy issued for landlord's use, a monetary order for money owed or compensation for damage or loss and an order allowing the tenant to reduce rent for repairs, services or facilities agreed upon but not provided.

Both parties attended the hearing by conference call and gave testimony. The tenant has confirmed receiving the landlord's documentary evidence with the notice of hearing package and has confirmed that no documentary evidence was submitted by the tenant for the hearing. As both parties have attended and have confirmed receipt of the notice of hearing package and the submitted documentary evidence, I am satisfied that both parties have been properly served as per the Act.

It was also clarified with both parties that as the tenant has failed to provide any written details concerning his application that the tenant may do so in his direct testimony but that the landlord would be given leave for an adjournment to respond if necessary. Neither party made any requests to adjourn the hearing.

During the hearing the landlord clarified that the landlord assumed the tenancy agreement dated August 1, 2012 from the previous owner in September of 2013 from the previous owner. The tenant made no comment or dispute.

Issue(s) to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order?

Is the landlord entitled to retain the security deposit?

Is the tenant entitled to an order cancelling the notice to end tenancy?

Is the tenant entitled to a monetary order?

Is the tenant entitled to an order to be allowed to reduce rent?

Background and Evidence

This tenancy began on August 1, 2012 on a month to month basis as shown by the landlord's submitted copy of the signed tenancy agreement dated August 1, 2012. The monthly rent is \$800.00 payable on the 1<sup>st</sup> of each month and a security deposit of \$400.00 was paid on August 1, 2012.

The landlord states that the tenant was served with a 2 month notice to end tenancy issued for landlord's use dated November 27, 2014 in person on November 30, 2014 displaying an effective end of tenancy date of January 31, 2015. The reason for the notice is shown as:

- 1) The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse.
- 2) A family corporation owns the rental unit and it will be occupied by an individual who owns, or whose close family member own, all the voting shares.

The landlord has also submitted a copy of a proof of service statement which states that the tenant was served with the notice dated November 27, 2014 on November 30, 2014 by hand delivering a copy to the person with a witness.

The tenant confirmed receipt of the notice dated November 27, 2014 on November 30, 2014 and the contents of the notice. The tenant disputes the landlord's reasons for ending the tenancy. The landlord clarified that his uncle would be moving into the rental property as he is a shareholder of the corporation and that this complies with the notice given. The tenant states that he cannot trust the landlord, X.R.S. and did not know who this person was. The tenant stated that because of past issues over the tenancy, he does not believe the landlord.

The landlord seeks an order of possession as a result of a notice to end tenancy issued for landlord's use to be effective on January 31, 2015. The landlord also seeks a monetary order for unpaid rent of \$4,800.00 which consists of unpaid rent from May 2014 to August 2014 and for November and December of 2014 for 6 months of arrears at \$800.00 per month.

The tenant disputes the landlord's claims that no rent has been paid. The tenant states that he always pays the rent in cash to the landlord, but that the landlord refuses to provide a receipt. The landlord states that he does have a receipt book for cash rent payments, but disputes that he has not received any rent payments from the tenant, except on one occasion. The landlord clarified that he received a cheque for \$700.00 from the tenant as a result of a rent payment for September 2014, minus \$100.00 as a result of an order for compensation to the tenant for \$100.00. The landlord has submitted a copy of a returned NSF cheque of \$700.00 dated September 6, 2014. The tenant states that all of the rent comes from his father's bank account and that there is a record of the withdrawal on each occasion for the rent, but has not provided any evidence to such. The landlord states that he has no records other than the \$700.00 NSF cheque from the tenant to show that no rent was paid for the 6 months of unpaid rent totalling, \$4,800.00. The landlord stated that he has made demands for the rent to be paid, but has not served the tenant with a 10 day notice to end tenancy issued for unpaid rent.

The tenant seeks an order cancelling the 2 month notice to end tenancy issued for landlord's use dated November 27, 2014 as he believes the landlord will not comply with the order in good faith. The tenant also seeks a monetary order for \$4,000.00 and has clarified that he was told to just put down an amount. The tenant confirmed that this was an arbitrary amount not based on any actual monetary losses. The tenant has failed to provide any written details of his claims or sufficient details of his claim. The tenant has provided in his direct testimony that he is seeking compensation for having no garbage collection totalling a 2-3 month period from May to August of 2014 and again in September 2014 to January 2015. The landlord disputes this stating that he has a professional garbage collection agency that regularly picks up garbage and will also pick up additional times if requested to do so. The tenant states that there was one occasion when the upstairs tenant filled the garbage bins immediately after being emptied and that there was no collection at all after notifying the landlord. The landlord disputes this stating that on that one occasion after the landlord was informed of the full bins, the landlord arranged to have the bins emptied after 2-3 days. The tenant disputes this. The tenant also states that the upstairs tenant had threatened him and his father physically and that the landlord was notified. The landlord confirmed the report and upon the request of the tenant reported the crime to the police. The landlord

stated that the police notified him that the tenant must initiate the complaint themselves with the police. The landlord states that he tried to follow up with the issue by investigating the matter and was informed that the tenant had a threatening email from the upstairs tenant. The landlord states that he requested a copy so that he could act upon it, but that the tenant never gave him a copy. The tenant disputes this stating that a copy was given to the landlord. The tenant also claims that for the last 8 months there has been an infestation of rats in the rental property and that the landlord was informed of the issue. The landlord confirmed that he responded to a complaint for rats and was informed by the tenant that he had no issues with rats. The landlord states that rats were reported to be present by the upstairs tenant and that rat traps were given to the tenant to place. The tenant disputes this stating that he did inform the landlord that he had rat problems. The landlord disputes this. The landlord also claims that the landlord is stealing his mail and that his dolly cart was stolen by the landlord's wife. The landlord disputes this stating that no mail was taken and that there is currently a dolly cart in front of the tenant's rental which the tenant denies owning. The tenant states that the dolly cart was there one day and that after the landlord's wife was on site that the dolly cart disappeared.

The tenant states that the landlord is failing to comply with the Act by maintaining the rental property in a suitable condition. The landlord disputes this.

### Analysis

I accept the evidence submitted by both parties and find that the landlord's 2 month notice to end the tenancy dated November 27, 2014 was properly served upon the tenant on November 30, 2014 as the landlord's proof of service document and the tenant's direct testimony confirmed receipt of the same notice on November 30, 2014 as claimed by the landlord.

Although the tenant disputes the truthfulness of the landlord to comply with the notice because of past issues over the tenancy, I find that the tenant has failed to provide sufficient evidence to satisfy me that the landlord would fail to comply with the notice as it was served. The tenant has provided no documentary evidence or sufficient details in his direct testimony to show that the landlord would not comply in good faith with the notice other than undocumented allegations in his direct testimony. The tenant's application to cancel the notice dated November 27, 2014 is dismissed. The landlord's notice is upheld. The landlord is granted an order of possession for the effective end of tenancy date of January 31, 2015. The tenant must be served with the order of

possession. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

I find on a balance of probabilities that the landlord has failed to establish a claim for unpaid rent of \$4,800.00. The tenant has disputed this claim by the landlord and the landlord has failed to provide sufficient evidence to satisfy me that any rent arrears exist, other than the \$700.00 for the NSF cheque for September 2014. The landlord stated that he has no tenant ledgers or records or any written documentation that the tenant is in rent arrears. The tenant provided no dispute or details concerning the NSF cheque. As such, I find that the landlord has established a monetary claim for \$700.00 for the unpaid rent of September 2014.

As for the tenant's monetary claim, I find that the tenant has failed to provide sufficient evidence to satisfy me that the landlord has been negligent in their responsibilities as a landlord. The onus or burden of proof lies with the party who is making the claim. In this case, the burden is with the tenant. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support their claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails. The tenant has provided details in his direct testimony which is disputed by the landlord in his direct testimony. Neither party has provided any supporting evidence. As well, the tenant has provided no basis to support the \$4,000.00 claim other than to state that he has been paying rent and that the landlord has failed to comply with the Act. The tenant's monetary claim is dismissed.

As the tenancy is coming to an end I decline to make any order regarding the tenant's request to reduce rent.

The landlord is also entitled to recovery of the \$50.00 filing fee. I order that the landlord may retain the \$400.00 security deposit in partial satisfaction of the claim and I grant a monetary order for the balance due of \$350.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The landlord is granted an order of possession for January 31, 2015.

The landlord is granted a monetary order for \$350.00.

The tenant's monetary claim is dismissed.

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: January 08, 2015

---

Residential Tenancy Branch

