



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Nicola Valley Affordable Housing Society  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      Landlord: OPR, MNR  
Tenants: DRI, CNE, CNR, FF

### Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord sought an order of possession and a monetary order. The tenants sought to cancel two notices to end tenancy and to dispute a rent increase.

The hearing was conducted via teleconference and was attended by two agents of the landlord and the male tenant.

At the outset of the hearing the tenant clarified that they were not issued a 1 Month Notice to End Tenancy for End of Employment. As such, I amend the tenants' Application to exclude the matter of cancel a 1 Month Notice to End Tenancy to End Tenancy for End of Employment.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent and to a monetary order for unpaid rent, pursuant to Sections 46, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenants are entitled to dispute a notice of rent increase; to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 42, 46, 67, and 72 of the *Act*.

### Background and Evidence

The landlord submitted the following documentary evidence:

- A copy of a residential tenancy agreement which was signed by the parties on July 18, 2013 for a month to month tenancy beginning on July 1, 2013 with monthly rent due on the 1<sup>st</sup> of each month. The tenancy agreement does not indicate a market or economical rent; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on January 5, 2015 with an effective vacancy date of January 15, 2015 due to \$2,444.00 in unpaid rent.

Documentary evidence filed by the landlord indicates the tenants failed to pay the full rent owed for the months of November and December 2014 and January 2015 and that the tenants were served the 10 Day Notice to End Tenancy for Unpaid Rent by posting it to the rental unit door on January 5, 2015 at 12:00 p.m.

The Notice states the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not pay the rent in full but did apply to dispute the Notice to End Tenancy within five days.

The landlord submits that in September 2014 all tenants were sent a letter advising that income verification would be required by October 2014 to determine subsidy amounts for their rental units. The landlord testified that despite repeated attempts the tenants have refused to provide any income information to them for income verification.

The landlord acknowledges that the tenant used to be employed by the landlord but that he is also an independent self-employed contracted and he has not provided any income verification.

The tenant submits that the landlord has his income information because he had been working for them and he shouldn't have to submit them to them, despite the fact that they have been repeatedly asking for them and warning that he might lose his subsidy if he did not submit them himself.

The tenant submits that his rent previously was \$535.00 and that by raising the rent to \$810.00 for November and December 2014 and \$824.00 in January 2015 the landlord is imposing a rent increase that is not allowed under the *Act*.

The tenant also submits that he has no other source of income but that he has been receiving food from family members but remains unable to pay rent, in any amount, because he has no income. He also states that he is in a dispute with the landlord over work that had been done for which he has not yet been paid.

### Analysis

Rent is defined in Section 1 of the *Act* as money paid or agreed to be paid, or value or a right given or agreed to be given, by or on behalf of a tenant to a landlord in return for the right to possess a rental unit, for the use of common areas and for services or facilities.

From the testimony provided by the landlord I find that the value of rent agreed to by both parties prior to the start of the tenancy is known as the market rent. I accept that the amount of market rent prior to 2015 was \$810.00. I also find the agreement provides terms, agreed upon by both parties that would provide the tenant with a subsidy to be put toward the payment of the rent on a monthly basis and that that subsidy is based on the tenants income and assets.

I find that the letter dated December 8, 2014 is a notification to the tenants of the end of their entitlement to the subsidy in the amount previously granted to the tenants. I am not persuaded by the tenant's position that this constitutes a rent increase, as the value of the market rent was \$810.00 for the months of November and December 2014 which increased to \$824.00 in January 2015. As such, I dismiss the portion of the tenant's Application disputing a rent increase.

Section 26 of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has the right under this *Act* to deduct all or a portion of the rent.

Section 46 of the *Act* states a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy on a date that is not earlier than 10 days after the date the tenant receives the notice

In the case before me, I find the tenant has failed to even attempt to pay any rent to his landlord for the months of November and December 2014 and January 2015. While I accept that the tenant may be in a dispute with the landlord over employment income there is nothing in the *Act* that allows a tenant to withhold any amount of rent while disputing payments from a landlord for employment services provided by a tenant.

As such, I find the tenant has no authority under the *Act* to withhold rent from the landlord and the landlord is entitled to end the tenancy under Section 46. Therefore I dismiss the portion of the tenants' Application seeking to cancel the 10 Day Notice to End Tenancy for Unpaid Rent.

Conclusion

I find the landlord is entitled to an order of possession effective **two days after service on the tenants**. This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the landlord is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$2,444.00** comprised of rent owed.

This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: January 29, 2015

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Residential Tenancy Branch

