



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

For the tenant – CNR

For the landlord – OPR, MNR, FF

### Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenant applied to cancel the Notice to End Tenancy for unpaid rent. The landlord applied for an Order of Possession for unpaid rent; for a Monetary Order for unpaid rent; and to recover the filing fee from the tenant for the cost of this application.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

### Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession due to unpaid rent?
- Is the landlord entitled to a Monetary Order to recover unpaid rent?
- Is the tenant entitled to an Order to cancel the 10 Day Notice?

### Background and Evidence

The parties agreed that this tenancy started on October 15, 2014. Rent for this unit is \$760.00 per month and is due on the 1<sup>st</sup> of each month.

The landlord testified that the parties had a previous hearing on December 11, 2014. At that hearing the parties reached a settlement and agreed that the tenancy would end on March 31, 2015 and also agreed that the landlord would be issued with an Order of Possession effective on that date. The landlord testified that since that settlement was made the tenant has failed to pay rent for the unit for December, 2014 and January, 2015 of \$1,520.00. The landlord issued a 10 Day Notice to End Tenancy for unpaid rent on January 19, 2015. The 10 Day Notice was served upon the tenant's son and the tenant confirmed she received the Notice on this date. The tenant had five days to either pay the outstanding rent or apply for Dispute Resolution or the tenancy would end on January 29, 2015. The tenant did not pay the outstanding rent. The landlord testifies that the tenant has also failed to pay any rent for February, 2015 and the landlord seeks to amend their application to include the unpaid rent for February of \$760.00. The total amount of unpaid rent is now \$2,280.00.

The tenant testified that when the tenant moved into the unit the landlord knew the tenant was on disability and wanted to get housing through BC Housing. The rental was meant as a temporary measure.

The tenant disputed that she owed a full month's rent for December, 2014 as the tenant and landlord had an agreement that half the rent could be paid on the 1<sup>st</sup> and the other half paid on the 15<sup>th</sup> of each month. The tenant testified that she had paid the first half's rent for December on December 01, 2014 and that the landlord agreed this at the last hearing.

The tenant testified that she has not been able to pay the balance of rent for December or rent for January and February as the landlord refused to sign the shelter form for Social Services to pay the rent.

The landlord disputed the tenant's claims. The landlord testified that the amount paid by the tenant on December 01, 2014 was half months rent owed for November, 2014. The landlord testified that she received a call from Social Services concerning the tenant and they asked the landlord if the landlord and tenant had a settlement in place. The landlord informed social services that the tenant had asked the landlord for a letter stating she had paid rent for December and that a settlement had been agreed where the tenancy would end on March 31, 2015. The landlord testified that she was not willing to provide a letter with false information to the tenant saying rent was paid for December when it had not been paid. The landlord testified that the tenant had agreed to pay December's rent when she got her Income tax return but the landlord testified that she relies on the rent money and was not willing to wait for the tenant to pay the rent.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of the landlord's agent and the landlord. Section 26 of the Act states:

*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 a right under this Act to deduct all or a portion of the rent.*

Furthermore, a third party agreement such as one the tenant was trying to get with Social Services to pay the rent is not enforceable under the Act and therefore the tenant still remains responsible for the rent and cannot hold the landlord responsible if the landlord refuses to sign an agreement for the tenant to get the rent from Social Services.

Consequently, I find in favor of the landlords claim for unpaid rent and I grant the landlord a Monetary Order for **\$2,280.00** pursuant to s. 67 of the *Act*. I have allowed the landlord to amend their application to include unpaid rent for February as the tenant has continued to reside in the rental unit past the effective date of the Notice and would be aware that rent must be paid on February 01, 2015.

I accept that the tenant was served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy Act*. The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The Notice is deemed to have been received by the tenant on January 19, 2015. I accept the evidence before me that the tenant has failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the *Act*.

Based on the foregoing, I find that the agreement previously made between the parties no longer has effect as the tenant failed to pay the rent on the day it was due. Therefore, the landlord's application for an Order of Possession is upheld. As the effective date of the Notice has since passed I grant the landlord an Order of Possession effective two days after service pursuant to s. 55 of the *Act*.

As the landlord has been successful the landlord is also entitled to recover the filing fee of **\$50.00** from the tenant pursuant to s. 72(1) of the *Act*.

### Conclusion

I HEREBY ISSUE an Order of Possession in favour of the landlord effective **two (2) days after service upon the tenant**. This order must be served on the Respondent. If the Respondent fails to comply with this Order the Order may be filed in the Supreme Court and enforced as an Order of that Court.

I HEREBY FIND in favor of the landlord's amended monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$2,330.00** comprised

of unpaid rent and filing fee. The Order must be served on the Respondent. Should the Respondent fail to comply with the Order, the Order may be enforced through the Provincial Court as an Order of that Court.

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: February 12, 2015

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Residential Tenancy Branch

