



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      Landlord: OPR, MNR, FF  
Tenant: CNR, LAT, FF

### Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord sought an order of possession and a monetary order. The tenant sought to cancel a notice to end tenancy and an order allowing her to change locks on the rental unit.

The hearing was conducted via teleconference and was attended by the landlord's agent and the tenant.

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the 10 Day Notice to End Tenancy for Unpaid Rent and the continuation of this tenancy is not sufficiently related to the tenant's claim to allow her to change the locks to the rental unit. The parties were given a priority hearing date in order to address the question of the validity of the Notice to End Tenancy.

The tenant's other claim is unrelated in that the basis for it rests largely on other facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the 10 Day Notice. I exercise my discretion to dismiss the tenant's claim for seeking to change locks on the rental unit. I grant the tenant leave to re-apply for her other claim.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent; to a monetary order for unpaid rent; and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 46, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenant is entitled 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 46, 67, and 72 of the *Act*.

### Background and Evidence

The parties agreed the tenancy began as a month to month tenancy beginning on November 1, 2012 for a current monthly rent of \$910.00 due on the 1<sup>st</sup> of each month with a security deposit of \$430.00 paid. Neither party provided a copy of a written tenancy agreement outlining any fees were agreed to for late payment of rent.

Both parties provided into evidence a copy of a 10 Day Notice to End Tenancy for Unpaid Rent issued on January 21, 2015 with an effective vacancy date of January 31, 2014 due to \$1,520.00 in unpaid rent.

The landlord submits the notice is for the amount of \$1,520.00 because the tenant failed to pay \$510.00 and a late fee of \$50.00 for the month of December 2014 and \$910.00 plus a \$50.00 late fee for the month of January 2014. The landlord submits that the tenant has also not paid any rent for the month of February 2015.

The tenant testified that that she believes that the Notice should be cancelled because the landlord does not issue receipts for rental payments. The tenant acknowledges that she has not paid rent for the months of January and February 2015 but disputes the landlord's submission that she owes anything for December 2014.

The landlord's agent submits that the tenant paid for December 2014 rent by cheque which was returned by his financial institution as insufficient funds. The agent testified that his notes show that the tenant paid the landlord \$400.00 of the December rent but he was not sure on what date the payment was made.

The tenant submits that she paid the full amount of rent for the month of December 2014 over several installments but she could not remember specifically when the payments were made. She testified that the landlord did not issue her any receipts.

### Analysis

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. A notice under this section must comply with Section 52 of the *Act*.

As the tenant agrees that she had not paid rent for the month of January 2015, I find that the landlord was justified under Section 46 to issue the notice to end tenancy as he did on January 21, 2015.

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.

As there is no provision under the *Act* that allows a tenant to withhold rent from the landlord because the landlord may have, in the past, refused to provide a rent receipt I find the tenant had no right under the *Act* to withhold the rent and as such she has no grounds to have the Notice cancelled. I dismiss the tenant's Application for Dispute Resolution in its entirety.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 7 of the Residential Tenancy Regulation allows a landlord to charge a tenant a fee of no more than \$25.00 for late payment of rent only if the tenancy agreement provides for such a fee.

In the case before me, as neither party has provided a copy of a written tenancy agreement that specifically requires the tenant to pay any late fees, I find the landlord has failed to provide sufficient evidence for compensation for late payment fees, I dismiss this portion of the landlord's claim.

In addition, when two parties provide equally plausible accounts of events, the party with the burden of proof must provide additional evidence to corroborate their version if they are to be successful in their claim. As the tenant submits that she has paid the rent in full for the month of December 2014 and the landlord has failed to provide any evidence of any amounts received for the month of December 2014, I find the landlord has failed to establish any amount of rent owing for the month of December 2014. I dismiss this portion of the landlord's claim.

However, based on the testimony of both parties I find the landlord is entitled to compensation for the failure of the tenant to pay rent for the months of January and February 2015.

### Conclusion

I find the landlord is entitled to an order of possession effective **two days after service on the tenant**. This order must be served on the tenant. If the tenant fails 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 grant a monetary order in the amount of **\$1,870.00** comprised of \$1,820.00 rent owed and the \$50.00 fee paid by the landlord for this application.

This order must be served on the tenant. If the tenant fails 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: February 17, 2015

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Residential Tenancy Branch

