



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes                      MNDC OLC RR FF

### Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Tenant on February 10, 2015. The hearing was conducted via teleconference and was attended by the Agent for the Landlord and an Agent for the Tenant, both who gave affirmed testimony.

The Landlord and Agent were both named as respondent Landlords to this dispute; therefore, for the remainder of this decision, the Agent will be referred to as Landlord. In addition, terms or references to the Landlords importing the singular shall include the plural and vice versa.

At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

### Issue(s) to be Decided

1. Was the Tenant's application intended to dispute a 10 Day Notice for unpaid rent?
2. If so, was the Tenant's application successful or was it dismissed?
3. If dismissed, did the Landlord make an oral request for an Order of Possession?
4. Has the Tenant proven entitlement to monetary compensation or orders under the Act?

### Background and Evidence

At the outset of this hearing the Landlord testified that the Notice of Hearing document he had received from the Tenant had been altered to change the hearing date and the access code. He stated that he contacted the Residential Tenancy Branch (RTB) and was told the correct date and access code so he could join the hearing. The Landlord alleged that the Tenant purposely altered his documents to prevent him from attending the hearing.

The Landlord asserted that the Tenant had filed her application to dispute the 10 Day Notice to end tenancy for unpaid rent which he personally served to the Tenant on February 5, 2015. He pointed to the Tenant's application in the Details of the Dispute where she wrote the following:

*My Rent is paid for Fed at \$2300 and Damage Depoist is paided \$1150.00 [reproduced as written]*

The Landlord noted that the Tenant filed her application on February 10, 2015, exactly five days after he served her the Notice, which is also proof that she was disputing the Notice. The Landlord argued that the Tenant paid her first month's rent with a cheque that was returned and marked "account closed". He indicated that that cheque was written on an account with a different last name than what the Tenant wrote on her tenancy agreement, as listed on the front page of this decision.

The Tenant had submitted an application which had boxes checked off for the Tenant to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; to Order the Landlord to comply with the Act, regulation, or tenancy agreement; to allow the Tenant reduced rent for services or facilities or repairs agreed upon but not provided; and to recover the cost of the filing fee from the Landlords for this application. The details of the dispute were written as noted above.

The Tenant submitted documentary evidence consisting of only her tenancy agreement and addendum. The tenancy agreement submitted indicated that on January 20, 2015 the parties entered into a fixed term tenancy agreement that began on February 1, 2015, and was set to end on February 1, 2016. Rent is payable on the first of each month in the amount of \$2,300.00 and on February 1, 2015 the Tenant paid \$1,150.00 as the security deposit.

The person who attended the hearing on behalf of the Tenant provided affirmed testimony that she was the Tenant's sister and not the Tenant. She submitted that the Tenant was not able to attend the hearing and asked her to call in on her behalf. She stated that her sister left her with copies of the tenancy agreement and receipts showing rent was paid; however, she was not left with any 10 Day Notice.

When asked why the Tenant could not appear, the Tenant's Agent stated that she was out of town and that she has been at the Tenant's home. I then asked the Agent what the Tenant had requested she say at this hearing, on the Tenant's behalf, and she replied "I was not asked to say anything; I was only given the papers".

I then asked why the Tenant could not call into the hearing from out of town, as people call into these hearings from all over the world the Agent stated that the Tenant was attending a death in the family. The Agent claimed to not know anything about the Landlord's submission.

In closing, the Landlord stated that the Owners were requesting that the Tenant be evicted as they have now gone without February and March 2015 rent. The Landlord requested permission to pick up this Decision and that he be granted an Order of Possession.

### Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

62(3) of the Act stipulates that the director may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies.

I favored the evidence of the Landlord, who stated that the Tenant's application was filed to dispute the 10 Day Notice that had been personally served upon her on February 5, 2015. I favored the Landlord's evidence because upon review of the Tenant's application the information the Tenant wrote in the Details of the Dispute "*My Rent is paid for Feb at \$2300 and Damage Depoist is paided \$1150.00*" [reproduced as written] would only be relevant to a request to dispute an eviction notice for unpaid rent. The foregoing statement written by the Tenant would have no relevance to any of the other issues marked off on the Tenant's application.

In addition to the above, I accept the Landlord's submission that it was not a mere coincidence that the Tenant's application was filed exactly five days after she was personally served with the 10 Day Notice. Furthermore, the RTB record confirms that on February 19, 2015, the Landlord called into the RTB and informed them of the changes that had been made on the Notice of Hearing letter he had been served. The record confirms that the Landlord requested the correct information.

In *Bray Holdings Ltd. V. Black* BCSC 738, Victoria Registry, 001815, 3 May, 2000, the court quoted with approval the following from *Faryna v. Chorny* (1951-52), W.W.R. (N.S.) 171 (B.C.C.A.) at p. 174:

*The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The Test must reasonably subject his story to an examination of its consistency with the probabilities that surround the current existing conditions. In short, the real test of the truth of the story of a witness is such a case must be its harmony with the preponderance of the probabilities of which a practical and informed person would readily recognize as reasonable in that place and in those conditions.*

I find the Tenant's Agent's explanation that she was asked by the Tenant to attend this hearing without the Tenant telling her what to say on her behalf, to be improbable. Furthermore, I find it questionable that the Tenant was attending a death in the family or that the Agent, if actually the Tenant's sister, would not also be attending the alleged family emergency. Furthermore, given that the cheques that were issued for the first month's rent had a different name on them, I also question if the person who attended this hearing was in fact the Tenant's sister, and not the Tenant herself. I questioned the Agent's identity, because of the Agent's statement when she said "I've been at my sister's home". This statement could be seen as an attempt to fool the Landlord's Agent into thinking that she was the Tenant's sister and not the Tenant, as the Landlord's Agent had indicated that the owners had rented out the rental unit before asking him to act as their Agent.

Based on the above, and given the circumstances presented to me during the hearing, I find the Tenant purposely or inadvertently did not check off the box to request to dispute the 10 Day Notice. I make this finding in part, because if the Landlord had not been represented at this hearing, [i.e. if the changes to the Notice of Hearing were not verified and they called in on a different date], the Tenant, or her alleged Agent, could have requested that their application be amended to dispute the 10 Day Notice, based their statement that was written in the details of the dispute, claiming that they simply forgot to check off the appropriate box. Accordingly, I amend the Tenant's application to include the request to cancel the 10 Day Notice for unpaid rent, pursuant to section 64(3)(c) of the Act.

Based on the above, and in absence of any relevant oral submissions from the Tenant or her alleged agent, I find the Tenant submitted insufficient evidence to dispute the 10 Day Notice or to prove any of the items claimed on the Tenant's application. Accordingly, I dismiss the Tenant's application in its entirety, without leave to reapply.

Section 55 of the Act provides that an Order of Possession **must** be provided to a Landlord if a Tenant's application to dispute a Notice to End Tenancy is dismissed and the Landlord makes an oral request for an Order of Possession during the scheduled hearing. Accordingly I award the Landlord an Order of Possession.

#### Conclusion

I HEREBY DISMISS the Tenant's application, without leave to reapply.

The Landlord has been granted an Order of Possession effective **Two (2) Days after service upon the Tenant**. In the event that the Tenant does not comply with this Order it may be filed with the Province of British Columbia Supreme Court and 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: March 16, 2015

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Residential Tenancy Branch

