



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

Landlord: OPR, MNR

Tenant: CNC, CNR, MNR, MNDC, MNSD, RP, LRE, FF, O

### 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 2 notices to end tenancy; a monetary order for emergency repairs; compensation; and for return of the security deposit; and for orders requiring the landlord to make repairs and suspend or set conditions on the landlord's right to enter the rental unit.

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

The landlord's agent provided documentary evidence to confirm the tenant was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail on March 3, 2015 in accordance with Section 89. Canada Post tracking information confirms that the tenant signed for and received the landlord's notice of hearing documents on March 6, 2015.

In addition, I note that the hearing date and time were set as a result of the tenant's Application for Dispute Resolution and as such, I am satisfied that the tenant was aware of the call in time and procedures for this hearing as a result of his own Application. Further, I note that the tenant did not submit any evidence in support of his Application or in response to the landlord's Application, at all.

Based on the above, I find that the tenant has been sufficiently served with the documents pursuant to the *Act*.

I note that in the tenant's Application for Dispute Resolution two people are named as tenants (KT and MF). However, as the tenancy agreement submitted into evidence names only 1 tenant and is signed only by that 1 tenant – KT. As such, I amend the tenant's Application to name only the tenant KT as MF has no standing in this tenancy.

The landlord has indicated that he had originally had obtained an order of possession and a monetary order for rent for the month of December 2014 through a separate file.

I note that that file was the subject of a Review Consideration decision in favour of the tenant granting a new hearing that was held and a subsequent Review Consideration in favour of the landlord and set to be heard on April 15, 2015. However, as those orders have been suspended as a result of the second Review Consideration, I find that a final judgment on the merits of that claim has not yet been made and as such *res judicata* is **not** applicable.

*Res judicata* is the doctrine that an issue has been definitively settled by a judicial decision. The three elements of this doctrine, according to Black's Law Dictionary, 7<sup>th</sup> Edition, are: an earlier decision has been made on the issue; a final judgment on the merits has been made; and the involvement of the same parties.

### 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 tenant is entitled to cancel a 1 Month Notice to End Tenancy for Cause and 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, 47 67, and 72 of the *Act*.

### Background and Evidence

The landlord submitted into evidence the following relevant documents:

- A copy of a tenancy agreement signed by the parties on November 16, 2014 for a 1 year fixed term tenancy beginning on November 18, 2014 for the monthly rent of \$2,500.00 due on the 31<sup>st</sup> of each month with a security deposit of \$1,250.00 paid;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent issued on February 16, 2015 with an effective vacancy date of February 28, 2015 due to \$7,500.00 in unpaid rent;
- A copy of a Proof of Service document signed by the landlord's agent and a witness confirming the 10 Day Notice was served on the tenant by posting it to the door or other conspicuous place (taped to garage door, very front of house) on February 16, 2015 at 10:00 a.m.

The landlord's agent testified at the outset of the hearing the tenant is still in the rental unit and has not vacated the property and that to date the tenant has not paid any of the outstanding rent for the months of December 2014, January, February or March 2015.

### Analysis

As the tenant failed to attend this hearing, I dismiss his Application for Dispute Resolution in its entirety without leave to reapply.

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*.

Section 46(4) allows the tenant to either pay the rent or file an Application for Dispute Resolution to dispute the notice within 5 days of receipt of the notice.

As a result of dismissing the tenant's Application for Dispute Resolution and the undisputed testimony of the landlord's agent, I find the tenant has failed to pay any outstanding rent as noted on the 10 Day Notice or rent for the month of March 2015. I also find that there is no evidence before me that the tenant had any authority under the *Act* to withhold any amount of rent from the landlord.

### 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 **\$10,000.00** comprised of rent owed.

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: March 24, 2015

---

Residential Tenancy Branch

