



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding BLACK GOLD REALTY LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR, MT, OPR, MNR, MNDC, FF

### Introduction

This hearing was scheduled to deal with cross applications. The tenant applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent. The landlord applied for an Order of Possession for unpaid rent and a Monetary Order for unpaid and loss of rent. Only the landlord was represented at the hearing. The landlord testified and provided registered mail receipts as evidence that the landlord's Application and an evidence package were sent to the tenant via registered mail on March 6, 2015 and March 16, 2015 respectively. Both packages were successfully delivered according to the Canada Post tracking numbers on March 10, 2015 and March 17, 2015 respectively. I was satisfied the tenant was served with the landlord's hearing documents and I continued to hear from the landlord without the tenant present.

Since the tenant failed to appear at the hearing in support of her request to cancel the 10 Day Notice to End Tenancy for Unpaid Rent, her Application was dismissed.

On a procedural note, the landlord applied for compensation totalling \$2,900.00 for unpaid rent and loss of rent for the first half of April 2015. During the hearing, the landlord stated that she was seeking to amend the application to include loss of rent for the entire month of April 2015 and registered mail costs. I noted that by way of a document entitled "COSTS" that was included in the landlord's evidence package the landlord provided a tally of "costs" in the sum of \$3,472.88 which included the unpaid rent, loss of rent for April 2015, and registered mail costs. I found that a document entitled "COSTS" included in the evidence submission to be insufficient to convey to the tenant that the landlord was seeking to amend the application. Nor, does the document, in itself, meet the requirements respect to amending the application as provided in the Rules of Procedure. Therefore, I have only considered the landlord's monetary claim of \$2,900.00 as indicated on the application.

Should the landlord incur losses related to the second half of April 2015 or any other losses related to this tenancy that were not dealt with by way of this application the landlord remains at liberty to file another application to seek recovery of those losses.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession for unpaid rent?
2. Is the landlord entitled to a Monetary Order for unpaid rent and loss of rent?

Background and Evidence

The six month fixed term tenancy commenced November 1, 2014 and was set to expire April 30, 2015. At the end of the fixed term the tenant was required to vacate the rental unit. The monthly rent of \$1,000.00 was to be paid on the 1<sup>st</sup> day of every month. Although a security deposit and pet damage deposit were required under the terms of tenancy, neither was paid by the tenant.

The tenant was late in paying all of the rent for December 2014 but it was eventually paid in full on January 9, 2015. The tenant paid \$400.00 and \$200.00 toward January 2015 rent on January 9, 2015 and January 23, 2015 respectively leaving a balance of \$400.00 outstanding.

In January 2015 the owner of the property agreed to reduce the monthly rent to \$850.00 starting February 1, 2015 on the condition the tenant pay all of the rental arrears by January 23, 2015. The landlord's agent prepared a document to reflect this amendment to the tenancy agreement but it was not signed by the tenant and the tenant did not fulfill her agreement to pay the rental arrears so rent remained at \$1,000.00 per month.

The tenant did not pay any rent for February 2015 and on February 20, 2015 the landlord personally served the tenant with a 10 Day Notice to end Tenancy for Unpaid Rent (the Notice). The Notice indicates rent of \$1,400.00 was outstanding as of February 1, 2015 and has a stated effective date of March 2, 2015. The tenant did not pay the outstanding rent but filed to dispute the Notice on February 25, 2015. The tenant's application to cancel the Notice indicated she was unable to pay rent due to financial difficulties and her Application was dismissed as noted in the Introduction section of this decision.

The tenant did not pay any rent for March 2015 or April 2015 and she had not yet returned possession of the rental unit to the landlord.

The landlord seeks an Order of Possession effective as soon as possible. The landlord also applied to recover unpaid rent of \$400.00 for January 2015; \$1,000.00 for February 2015; \$1,000.00 for March 2015; and, loss of rent in the amount of \$500.00 for first half of April 2015.

Included in the landlord's evidence package were copies of: a written submission; the tenancy agreement; the addendum to reduce the rent that was not executed or fulfilled; the 10 Day Notice; Proof of Service of the 10 Day Notice; registered mail receipts and Canada Post print-outs for the registered mail sent to the tenant; letters sent to the tenant by the landlord; and, various text messages exchanged between the parties.

### Analysis

Under the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement. Where a tenant does not pay rent the landlord is at liberty to issue a 10 Day Notice to End Tenancy for Unpaid Rent. When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the Notice or the tenant has five days to dispute the Notice by filing an Application for Dispute Resolution.

I accept the undisputed evidence before me that the landlord served a 10 Day Notice to End Tenancy to the tenant on February 20, 2015. Although the tenant filed to dispute the Notice within 5 days of receiving the Notice, her request to cancel the Notice was dismissed as the tenant presented no legal basis for it to be cancelled.

Upon review of the 10 Day Notice and the tenancy agreement, and upon consideration of the undisputed testimony before me, I find the 10 Day Notice valid and I conclude the tenancy legally came to an end on the stated effective date of March 2, 2015. Since the tenant has not returned possession of the unit to the landlord I grant the landlord's request for an Order of Possession. Provided to the landlord with this decision is an Order of Possession effective two (2) days after service upon the tenant.

I am satisfied the parties did not amend the tenancy agreement so as to reduce the amount of monthly rent payable starting in February 2015 as the tenant failed to fulfill a condition precedent and duly execute the addendum as required to amend a tenancy agreement.

Based upon the undisputed evidence before me, I find the landlord entitled to recover unpaid rent for January 2015 through March 2015 as claimed. Given the tenant remains in possession of the rental unit and the landlord's undisputed testimony the

rental market is depressed I further award the landlord loss of rent for first half of April 2015 in the amount of \$500.00. If the landlord suffers greater losses related to loss of rent for April 2015 the landlord is at liberty to make a subsequent application.

Given the landlord's success in this proceeding, I also award the landlord recovery of the \$50.00 filing fee paid for the landlord's application.

In light of the above, the landlord is provided a Monetary Order calculated as follows:

Unpaid Rent: January 2015	\$ 400.00
Unpaid Rent: February 2015	1,000.00
Unpaid Rent: March 2015	1,000.00
Loss of Rent: April 2015	500.00
Filing fee	<u>50.00</u>
Monetary Order	\$2,950.00

To enforce the Monetary Order it must be served upon the tenant and it may be filed in Provincial Court (Small Claims) to enforce as an order of the court.

### Conclusion

The landlord has been provided an Order of Possession effective two (2) days after service upon the tenant. The landlord has been provided a Monetary Order in the sum of \$2,950.00 to serve and enforce as necessary.

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: April 02, 2015

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Residential Tenancy Branch

