



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding COUNTRYWIDE VILLAGE REALTY LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR MNR MNSD FF  
                             CNR MNDC O

### Preliminary Issues

On the Landlord's application for dispute resolution the Landlord wrote, among other things, the following in the details of the dispute:

*Monetary order – Rent for March 2015 \$291.29, April 2015 \$850, May 2015 \$850...*

Based on the aforementioned I find the Landlord had an oversight or made a clerical error in not selecting the box for money owed or compensation for damage or loss under the *Act*, regulation, or tenancy agreement when completing the application, as they clearly indicated their intention of seeking to recover the payment for occupancy for May 2015, after the effective date of the 10 Day Notice. Therefore, I amend the Landlord's application to include the request for money owed or compensation for damage or loss under the *Act*, regulation, or tenancy agreement, pursuant to section 64(3)(c) of the *Act*.

Residential Tenancy Rules of Procedure, Rule 2.3 states that, in the course of the dispute resolution proceeding, if the arbitrator determines that it is appropriate to do so, he or she may dismiss the unrelated disputes contained in a single application with or without leave to reapply.

Upon review of both the Landlord's and the Tenant's application I have determined that I will not deal with all the dispute issues each party has placed on their application. For disputes to be combined on an application they must be related. Not all the claims on these applications are sufficiently related to the main issue relating to the Notice to end tenancy and the unpaid rent. Therefore, I will deal with the Landlord's request for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent, and the Tenant's request to cancel the Notice to end tenancy issued for unpaid rent. I dismiss the balance of the Landlord's and Tenant's application, with leave to re-apply.

### Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord filed on April 16, 2015, seeking an Order of Possession for unpaid rent and a Monetary Order for: unpaid rent or utilities; for damage or loss under the *Act*, regulation or tenancy agreement as it relates to unpaid rent; and to recover the cost of the filing fee from the Tenant for this application.

The Tenant filed on April 10, 2015, seeking an Order to cancel the notice to end tenancy issued for unpaid rent.

The hearing was conducted via teleconference and was attended by the Landlord and the Tenant who both provided affirmed testimony. The Owner was in attendance as an observer and did not submit testimony or evidence. Each party confirmed receipt of the other's application and evidence. The Landlord noted that she had received the Tenant's application late, after the required three day time frame; however, she confirmed that she had had an opportunity to review that application and was prepared to submit her response.

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. Should the 10 Day Notice be upheld or cancelled?
2. If upheld, should the Landlord be granted an Order of Possession?
3. Is the Landlord entitled to a Monetary Order?

#### Background and Evidence

It was undisputed that the parties executed a written tenancy agreement for a month to month tenancy that commenced on March 16, 2015. The Tenant is required to pay rent of \$850.00 on the first of each month and on March 16, 2015 the Tenant paid \$425.00 as the security deposit.

The Tenant testified that he received the 10 Day Notice to end tenancy for unpaid rent sometime between April 6, 2015 when it was posted to his door and April 10, 2015 when he filed his application to dispute the Notice. The Tenant acknowledged that he owes the Landlord money for March, April and May 2015 rent which he has not paid because he lost his employment.

The Tenant asserted that he had offered to pay the Landlord some money and the Landlord refused to accept it because they want him out anyways. He stated that he is waiting for some money to arrive but that there has been a delay in receiving his funds. He suggested that he may have \$500.00 that he could pay to the Landlord the day of the hearing and additional money in about "a week or so", if the Landlord would agree to allow him to stay.

The Landlord testified that the Tenant currently owes \$1,991.29 in unpaid rent which is comprised of \$291.29 for March 2015, \$850.00 for April 2015 and \$850.00 for May 2015. She disputed the Tenant's testimony and argued that he has never offered to pay them any money. He has told them that he was getting funds but there has been no offer to make a payment.

After a brief discussion the Landlord submitted that they wished to proceed with their application to request the Order of Possession and the Monetary Order for the unpaid rent.

### Analysis

Section 26 of the *Act* stipulates that a tenant must pay rent in accordance with the tenancy agreement; despite any disagreements the tenant may have with their landlord.

In this case the undisputed evidence was the Tenant was required to pay rent of \$850.00 on or before the first of each month, in accordance with the tenancy agreement. The Tenant did not comply with that term of his tenancy agreement by not paying his rent in full on the first of each month, in breach of section 26 of the *Act*. The undeniable evidence was the Tenant still owes rent of \$291.29 for March 2015 and \$850.00 for April 2015.

In the absence of the *Actual* date the Tenant received the 10 Day Notice, I find that on a balance of probabilities the Tenant received the Notice no later than April 9, 2015, the day before he filed his application to dispute the Notice. Therefore, the effective date of the Notice is **April 19, 2015**.

Based on the above, I find that the Landlord has met the requirements for the 10 day notice to end tenancy pursuant to section 46(1) of the *Act* and the Tenant is required to vacate the rental unit in accordance with the Notice. Accordingly, I approve the Landlord's request for an Order of Possession.

The Landlord claims for unpaid rent of \$1,141.29 (\$291.29 + \$850.00) that was due April 1, 2015, pursuant to section 26 of the *Act*. As indicated above, the evidence regarding the unpaid rent was undisputed. Accordingly, I grant the Landlord a Monetary Order for unpaid rent of **\$1,141.29**.

As noted above this tenancy ended on the effective date of **April 19, 2015**, in accordance with the 10 Day Notice. Therefore, I find the Landlord is seeking loss of rent

for May 2015. The Tenant is still occupying the unit and the Landlord will not regain possession of the unit until after service of the Order of Possession; therefore, I award the Landlord compensation for use and occupancy for the entire month of May 2015 in the amount of **\$850.00**.

The Landlord has succeeded with their application; therefore I award recovery of the **\$50.00** filing fee.

As noted above, I concluded that the Landlord had met the requirements to uphold the 10 Day Notice that was issued April 6, 2015. Therefore, the Tenant's application to set aside the Notice is dismissed, without leave to reapply.

### Conclusion

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.

The Landlord has been awarded a Monetary Order for **\$2,041.29** (\$1,141.29, + \$850.00 + \$50.00). This Order is legally binding and must be served 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 Small Claims Court and enforced as an Order of that Court.

I HEREBY DISMISS the Tenant's application to cancel the 10 Day Notice, without leave to reapply.

The Landlord's application for monetary compensation for damage or loss and to keep the security deposit is dismissed with leave to reapply.

The Tenant's application for monetary compensation for cleaning costs is dismissed, with 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: May 29, 2015

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Residential Tenancy Branch

