



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Vancouver Native Housing Society  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR, FF

### Introduction

This hearing was convened by way of conference call concerning an application made by the landlord for an Order of Possession and a monetary order for unpaid rent or utilities and to recover the filing fee from the tenant for the cost of the application.

An agent for the landlord attended the hearing, gave affirmed testimony and provided evidentiary material in advance of the hearing. Two other observers attended with the landlord's agent, who did not testify or take part in the proceedings. However, despite being served with the Landlord's Application for Dispute Resolution and notice of this hearing by registered mail on March 27, 2015, no one for the tenant attended. The line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony and the only participant who joined the call was the landlord's agent. The landlord's agent testified that the tenant was served on that date and in that manner and orally provided a tracking number assigned by Canada Post. The landlord's agent testified that the number is the number contained in the copy of the label that Canada Post attached to the mail, and I am satisfied that the tenant has been served in accordance with the *Residential Tenancy Act*.

All evidence and testimony provided has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

- Is the landlord entitled under the *Residential Tenancy Act* to an Order of Possession for unpaid rent?
- Has the landlord established a monetary claim as against the tenant for unpaid rent?

### Background and Evidence

The landlord's agent (hereafter referred to as the landlord) testified that this month-to-month tenancy began on October 1, 2014 and the tenant still resides in the rental unit. Rent is subsidized and the tenant's share is \$510.00 per month payable in advance on the 1<sup>st</sup> day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$525.00 which is still held in trust by the landlord and no pet damage deposit was collected. A copy of the tenancy agreement has been provided.

The landlord further testified that the tenant fell into arrears of rent and is currently in arrears the sum of \$2,550.00 to the end of May, 2015. A copy of a tenant ledger has been provided showing that the tenant paid no rent for December, 2014 or for January or February, 2015. On February 10, 2015 the tenant paid \$510.00 leaving a balance of \$1,020.00 outstanding. The tenant further failed to pay any rent for March, 2015.

The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by personally handing it to the tenant on March 6, 2015. A copy of the notice has been provided and it is dated March 5, 2015 and contains an expected date of vacancy of March 19, 2015 for \$1,530.00 of unpaid rent that was due on March 1, 2015. It has not been signed by a landlord. The tenant has not paid any rent since the issuance of the notice and arrears have now accumulated to \$2,550.00 to the end of May, 2015.

The landlord has not been served with an application for dispute resolution by the tenant disputing the notice.

The landlord also testified that it would not be difficult to re-rent, however another tenant advised the landlord that a fight took place inside the rental unit and the landlord anticipates damage. It is not likely the rental unit will be ready to re-rent before the end of May, 2015. The landlord seeks an Order of Possession and a monetary order in the amount of \$2,600.00 which includes recovery of the \$50.00 filing fee.

### Analysis

The *Residential Tenancy Act* states that once a tenant is served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, the tenant has 5 days to pay the rent in full or dispute the notice. If the tenant does neither, the tenant is conclusively presumed to have accepted the end of the tenancy and must move out of the rental unit within 10 days of service or deemed service. In this case, I am satisfied that the tenant was personally served with the notice on March 6, 2015 and has not disputed the notice and has not paid any rent.

The *Act* also states that in order to be effective, a notice given by a landlord must be signed:

**Form and content of notice to end tenancy**

**52** In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.

I refer to Residential Tenancy Branch Policy Guideline 18 – Use of Forms, which states, in part:

A form not approved by the Director is not invalid if the form used still contains the required information and is not constructed with the intention of misleading anyone. As a result, it is advisable to apply to an arbitrator to dispute the notice, so that the validity of the notice can be determined. Where a tenant accepts a Notice To End A Tenancy that is in the old form or is not in the required form and the tenant vacates in response to the notice, the landlord cannot rely upon the failure to give notice in the required form and allege that the tenant owes the landlord rent as a result of the improper ending of the tenancy.

In other words, had the tenant moved out, the landlord would not be able to say that the tenant hadn't given the appropriate notice, and the landlord would not be successful in obtaining a monetary order for unpaid rent at the end of the tenancy. In this case, the tenant did not move out, did not pay any rent, and did not dispute the notice. I find that the tenant has not been misled, and the tenant is conclusively presumed to have accepted the end of the tenancy, and the landlord is entitled under the *Act* to an Order of Possession.

I also accept that the tenant is in arrears of rent the sum of \$2,550.00, and the landlord is entitled to recover that amount.

Since the landlord has been successful with the application, the landlord is also entitled to recovery of the \$50.00 filing fee.

The landlord has not applied for an order permitting the landlord to keep the security deposit, and I leave it to the parties to deal with that in accordance with Section 38 of the *Residential Tenancy Act*.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord on 2 days notice to the tenant.

I further grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$2,600.00.

These orders are final and binding and may be enforced.

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 08, 2015

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Residential Tenancy Branch

