



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding City of Vancouver  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      Landlord: OPR, MNR, FF  
Tenant: MT, CNR, 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 more time to cancel a notice to end tenancy; to cancel a notice to end tenancy; and an order setting the amount of rent.

The hearing was conducted via teleconference and was attended by two agents for the landlord; the tenant and his advocate.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent; to a monetary order for unpaid rent; and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, 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 more time to cancel a notice to end tenancy; to cancel a 10 Day Notice to End Tenancy for Unpaid Rent; and an order setting the amount of rent on the rental unit, pursuant to Sections 46, 62, and 66 of the *Act*.

### Background and Evidence

Both parties submitted into evidence a copy of a tenancy agreement signed by the parties on July 9, 2014 for a month to month tenancy beginning on July 1, 2014 for the monthly rent of \$700.00 due on the 1<sup>st</sup> of each month with a security deposit of \$350.00 paid.

The tenant submitted that on the same day that the tenancy agreement was signed the landlord's agent verbally agreed that the rent would be set at \$375.00. The tenant submitted that when he asked about the discrepancy the agent informed him that the tenant would be expected to pay \$375.00 and that the Shelter Aid for Elder Renters (SAFER) program would pay the balance of \$375.00.

The landlord confirmed that at the time of the start of this tenancy they had just opened the new property and had several staff members assisting with the processing of tenancy agreements. They confirmed also that at that time tenants were advised that, if they were not receiving SAFER, they could pay rent in the amount of \$375.00 until "their SAFER grant kicked in".

Tenants were further advised that once SAFER "kicked in" rent would go back up to the amount in the tenancy agreement and they would need to repay the difference between the \$375.00 per month and the full \$700.00 per month for the period while they were waiting for SAFER to "kick in".

The parties agreed that an agent for the landlord assisted this tenant with his SAFER Application in July 2014. However, the tenant cannot remember if the agent was going to submit the Application or he was supposed to do so himself.

The tenant submitted that when he received a letter from the landlord dated January 29, 2015 stating that he was in rental arrears in the amount of \$2,975.00 he contacted SAFER and found out his Application was never submitted. He submitted an Application on February 12, 2015 and received a letter dated April 8, 2015 indicating that they are unable to complete the processing of his Application and identified the reasons for this inability. The letter gave the tenant until May 8, 2015 to submit the required additional documentation. The tenant has confirmed that he has taken the required steps to complete his Application for SAFER.

Both parties submitted into evidence a copy of a 10 Day Notice to End Tenancy for Unpaid Rent issued by the landlord on March 20, 2015 with an effective vacancy date of March 31, 2015 due to \$2,925.00 in unpaid rent. The landlord submitted in their Application for Dispute Resolution that they had served the Notice by posting it on the rental unit door on March 20, 2015 at 2:30 p.m. The tenant confirmed in his Application that he received the Notice on March 20, 2015.

The tenant seeks additional time to submit his Application for Dispute Resolution seeking to cancel this Notice because at the age of 71 he has some health concerns.

He also submitted that he did not understand the nature of the notice. The tenant submitted his Application for Dispute Resolution on March 27, 2015.

### Analysis

Section 66 of the *Act* states the director may extend a time limit established under the *Act* only in exceptional circumstances. Residential Tenancy Policy Guideline #36 states that “exceptional” means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend the time limit. The Guideline goes on to say that exceptional implies that the reason for failing to do something at the time it is required is very strong and compelling.

While I accept that the tenant is older and has some health concerns the tenant has provided no specific issues that arose that prevented him from filing his Application for Dispute Resolution within the 5 days required. Further, I find that the Notice itself very clearly notes and highlights that:

**“You may be EVICTED if you do not respond to this Notice.** You have five (5) days to pay the rent and utilities (if applicable) to the landlord or file an Application for Dispute Resolution with the Residential Tenancy Branch.”

As such, I find that the tenant has failed to provide sufficient evidence to establish any exceptional circumstances prevented him from applying within 5 days of receiving the Notice. I dismiss the portion of the tenant’s Application seeking more time to file his Application to dispute the Notice.

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*.

While I have determined that the tenant is not entitled to additional time to submit his Application for Dispute Resolution to cancel the Notice, I note that the burden remains on the landlord to establish that they had grounds to issue the Notice in the first place. Specifically, the landlord must establish that there was unpaid rent on a day after it was due, prior to issuing the 10 Day Notice to End Tenancy for Unpaid Rent.

In the case of verbal agreements, I find that where terms are clear and both the landlord and tenant agree on the interpretation, there is no reason why such terms cannot be enforced. However when the parties disagree with what was agreed-upon, the verbal

terms, by their nature, are virtually impossible for a third party to interpret when trying to resolve disputes.

I accept, from the tenant's submission, that the tenant has some issues with memory and as such he may not recall all of the details of any verbal agreements or promises made by the landlord at the time he signed the tenancy agreement and completed his original Application for SAFER. However, I accept the tenant was informed that his rent, at least for a time, would have been reduced to \$375.00.

Therefore, I accept the landlord's submission that a verbal promise was made to this tenant that until his SAFER grant "kicked in" the tenant was entitled to pay rent in the amount of \$375.00. I also accept that this term was contingent on the tenant's agreement that once his SAFER grant "kicked in" he would be responsible to pay to the landlord the difference between the amounts paid (\$375.00 per month) and the full rent as per the tenancy agreement (\$700.00).

Based on the documentary evidence submitted and the tenant's testimony confirming that his Application for SAFER has not yet been completely processed I find that the tenant's SAFER grant has not yet "kicked in". As such and as per the terms of the verbal agreement confirmed by the landlord, on the date the landlord issued the 10 Day Notice the tenant was not yet required to pay the difference between the \$375.00 per month paid and the \$700.00 rent outlined in the tenancy agreement.

As the landlord has provided no evidence that any amounts other than the \$325.00 per month difference was outstanding, I find the landlord has failed to establish that at the time the landlord issued the 10 Day Notice to End Tenancy for Unpaid Rent on March 20, 2015 the tenant owed the landlord any rent.

As such, I find the Notice is not enforceable. I further find that, at this time, the tenant does not owe the landlord any monies for the difference in rent amounts – only because the tenant's SAFER grant has not yet "kicked in".

Therefore, until such time as the SAFER grant "kicks in" I order that the tenant is obligated to pay the landlord rent in the amount of \$375.00 per month and once the grant "kicks in" the rent will be \$700.00 per month as per the written tenancy agreement.

If the tenant is approved for SAFER he must, as per the terms of the verbal agreement, pay the landlord the difference in rent for the full period that he has received the benefit of the reduced rent.

Clearly, the amount owed to the landlord after the grant “kicks in” will be substantial and as such I am confident the landlord will enter into a payment agreement with the tenant that he will be reasonably able to afford.

I caution the tenant that should he fail to take actions to ensure he provides all of the required documentation and any other requirements to complete his SAFER Application within a reasonable time the landlord may submit an Application for Dispute Resolution seeking to have the rent restored to the amount defined in the tenancy agreement (\$700.00 per month).

### Conclusion

Based on the above, I dismiss the landlord’s Application in its entirety.

I order that the 10 Day Notice to End Tenancy for Unpaid Rent issued by the landlord on March 20, 2015 is cancelled and that the tenancy remains in full force and effect.

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 07, 2015

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Residential Tenancy Branch

