



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding BAYSIDE TOWERS APARTMENTS LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes: CNR OPR FF

### **Introduction**

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) To cancel a notice to end tenancy for unpaid rent pursuant to section 46;
- b) To order the landlord to comply with the Act, Regulation or tenancy agreement; and
- c) To recover filing fees for this application.

Service:

The Notice to End Tenancy is dated May 3, 2015 to be effective May 17, 2015 and the tenant confirmed it was served personally on him. He filed his Application to dispute on May 6, 2015 and the landlord confirmed it was served on them. I find the documents were legally served for the purposes of this hearing.

### **Issue(s) to be Decided:**

Has the landlord proved on the balance of probabilities that there is unpaid rent so sufficient cause to end the tenancy or is the tenant entitled to any relief? Is the landlord entitled to an Order of Possession if the tenant is unsuccessful in the application?

Has the tenant proved on the balance of probabilities that the landlord is in violation of the Act or tenancy agreement by collecting an excess deposit?

### **Background and Evidence**

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the tenancy commenced in February 8, 2015 on a fixed term lease to January 31, 2016, rent is \$1195 a month which includes \$100 for parking and a security deposit of \$547.50 and rent of \$1155 for the last month was paid in February 2015.

The tenant said he realized that collecting rent for the last month in advance as a deposit was illegal and he was entitled to deduct it from rent. In May 2015, he deducted it and offered the landlord the balance of \$40 for his May rent. The landlord refused to accept this and issued him a Notice to End Tenancy.

The landlord justified the extra rent collected at the beginning of the tenancy by saying that he was uneasy as the fixed term lease provided for vacant possession at the end of the lease and the tenant refused to provide his previous address so he had concerns about his credit. He said the tenant offered the extra rent as an inducement for him to be accepted as a tenant. The tenant denied this absolutely and said he was willing to provide any and all information but the landlord said he did not need it as he was obtaining the extra month's rent. Both parties referred to the Application to Rent. On it, the tenant does not show a present address or landlord and he said he is a 'Business Owner' and has crossed out the authority for reporting agencies to disclose information on him to the landlord.

The landlord said he has issued another Notice to End Tenancy dated June 3, 2015.

Included with the evidence is a copy of the Notice to End Tenancy, receipts for the deposits, a rent ledger, the tenancy agreement, proof of service and statements of the parties.

On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

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**Analysis:**

As discussed with the parties in the hearing, the onus is on the landlord to prove on a balance of probabilities that there is unpaid rent so cause to evict the tenant. I find section 5 of the Act provides that it cannot be avoided or contracted out of and section 19 provides that the landlord must not accept a security or pet damage deposit that is greater than half of one month's rent and if he does, the tenant may deduct the overpayment from his rent. I find the tenant was within his legal rights to deduct the overpayment of the deposit from his rent for May, 2015. I told the parties that the Notice to End Tenancy for May 2015 was set aside and the tenancy would continue and the tenant could recover his filing fee by deducting it from June's rent. I find the tenant's balance of rent owed for May 2015 is \$40 and the landlord had refused to accept it; I find the tenant owes only \$40 for May's rent.

The landlord's records show they were meticulous in recording the February payments as the last month's rent and security deposit; however, I find this was a deposit for the

landlord's security against rent default and as such, is illegal under the Act. I attempted to point out to the landlord that the remedy in the Act to protect against excessive rental loss was not to collect additional rent up front as a deposit but to make an Application in a timely manner after issuing a Notice to End Tenancy (which has been issued for unpaid rent in June 2015). I declined to consider any further his Notice to End Tenancy for June 2015. The tenant became extremely aggressive and told me I had no right to give the landlord any legal advice. He was so aggressive and abusive in the conference that the conference was terminated.

**Conclusion:**

The Application of the Tenant to set aside the Notice to End Tenancy dated May 3, 2015 is successful. The tenancy is reinstated and continues.

**I HEREBY ORDER that the tenant may recover his filing fee by deducting \$50 from rent owed for June 2015.**

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: June 11, 2015

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Residential Tenancy Branch

