



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Royal LePage Parksville-Qualicum Property Management  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes                      OPR, OPB, MNR, MNSD, MNDC, CNR, FF

### Introduction

This hearing dealt with two related applications. One was the landlord's application for an order of possession, a monetary order and an order permitting retention of the security deposit and pet damage deposit in partial satisfaction of the claim. The other was the tenant's application for an order setting aside a 10 Day Notice to End Tenancy for Non-Payment of Rent. The landlord appeared.

The tenant died on June 11, 2015. No appeared at the hearing on his behalf.

The definition of "tenant" in section 1 of the *Residential Tenancy Act* includes the estate of a deceased tenant. Accordingly, I find that both applications can proceed and any applicable orders may be made even though the tenant has passed away.

### Issue(s) to be Decided

- Is the landlord entitled to an order of possession and, if so, on what terms?
- Is the landlord entitled to a monetary order and, if so, in what amount?

### Background and Evidence

This one year fixed term tenancy commenced November 7, 2015. The monthly rent of \$1400.00 is due on the first day of the month. One of the terms of the written tenancy agreement was that the tenant was to maintain the grounds by keeping the grass cut (including boulevards), borders weeded, and the property free of debris.

The tenant's first payment of the security deposit of \$700.00 and the pet damage deposit of \$700.00 was returned "NSF" but ultimately he did make those payments in full.

The tenant filed his application for dispute resolution on May 11, 2015, disputing a 10 Day Notice to End Tenancy dated May 4, 2015. On his application he stated that he had received the notice on May 6 and that he had paid the arrears of May rent by leaving a payment in the landlord's mail slot on May 9. The tenant filed a copy of the 10 Day Notice to End Tenancy with his application. The notice is properly completed and signed by the landlord.

The landlord testified that the tenant's rent is paid by the Ministry and that on May 12 they received a call from the Ministry advising that they were going to issue the May rent cheque. The landlord testified that they did not receive any rent for May. They acknowledged receipt of the tenant's application for dispute resolution sometime after May 12.

The landlord testified that on May 15 they issued and personally served a 10 Day Notice to End Tenancy for Non-Payment of the May rent. The tenant filed a copy of the May 15 notice with the Residential Tenancy Branch on May 21. The landlord filed a copy of the notice with their evidence package. The copy filed in evidence by the landlord is signed; the copy filed in evidence by the tenant is not.

The landlord also filed copies of 10 Day Notices to End Tenancy for Non-Payment of rent dated December 6, 2015; February 3, 2015; March 2, 2015; and June 3, 2015 but they did not file a 10 Day Notice to End Tenancy for Non-Payment of Rent dated May 4, 2015.

On May 22 the landlord filed its' Application for Dispute Resolution and served it personally on the tenant on May 25.

The tenant never filed any documentation to show that either the May or June rents had been paid.

In April and May the landlord sent the tenant several notices asking him to cut the grass or they would arrange to have someone else do it at the tenant's expense. The tenant did not cut the grass as requested. The landlord had a lawn care company cut the grass on May 28, 2015. By this time the grass was very long so the cost was more than usual. The invoice from the lawn company is for \$257.25, including applicable taxes.

The tenant did not pay the June rent. On June 3 the landlord issued a 10 Day Notice to End Tenancy for Non-Payment of Rent and served it personally on the tenant on June 4, 2015.

The tenant died on June 11, 2015.

There are other people living in the rental unit with the tenant but they are not parties to the tenancy agreement.

#### Analysis

The evidence is that the 10 Day Notice to End Tenancy dated May 15, 2015 is not valid because the copy served on the tenant did not comply with section 52 of the *Act* in that it was not signed by the landlord.

The tenant's evidence is that he was served with a properly completed 10 Day Notice to End Tenancy for Non-Payment of Rent on May 6. I accept the landlord's evidence that they did not receive payment of the May rent and that it was still outstanding as of the date of the hearing.

Accordingly, I find that the May 4 notice is valid and the tenant's application for an order setting it aside is dismissed.

Section 55(1) of the *Residential Tenancy Act* provides that if a tenant makes an application to set aside a landlord's notice to end a tenancy and the application is dismissed, the dispute resolution officer must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing, the landlord makes an oral request for an order of possession. The landlord did ask for an order of possession at the hearing and is therefore entitled to an order of possession effective two days after service on the tenant.

I find that the landlord has established a total monetary claim of \$3107.25 comprised of arrears of rent for May and June in the amount of \$2800.00; the cost of lawn cutting in the amount of \$257.25; and the \$50.00 fee paid by the landlord for their application. Pursuant to section 72(2) I order that the landlord retain the security deposit of \$700.00 and the pet damage deposit of \$700.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$1707.25.

#### Conclusion

- a. An order of possession effective two days after service has been granted to the landlord. If necessary, this order may be filed in the Supreme Court and enforced as an order of that Court.
- b. A monetary order has been granted to the landlord. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that court.

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 30, 2015

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Residential Tenancy Branch

