



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding TINKER REALTY INC.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR MNR MNSD MNDC FF  
CNC FF

### Introduction

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

The Landlord filed their application on June 25, 2015 seeking to obtain an Order of Possession for unpaid rent or utilities and a Monetary Order for: unpaid rent or Utilities; to keep all or part of the security and or pet deposit; for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement; and to recover the cost of the filing fee from the Tenant for this application.

The Tenant filed their application on May 21, 2015 seeking to obtain an Order to Cancel a Notice to end tenancy issued for Cause. The Tenant filed an amended application on May 26, 2015 which indicated he was also seeking to recover the cost of his filing fee from the Landlord.

The hearing was conducted via teleconference and was attended by two Agents for the Corporate Landlord, the Tenant, and the Tenant's Advocate. Each person gave affirmed testimony and confirmed receipt of the application, hearing documents, and evidence served by each other.

Both applications were filed listing the Landlord as a corporation. As indicated above, two agents (hereinafter referred to as Landlords), submitted testimony on behalf of the corporate Landlord. Therefore, for the remainder of this decision, terms or references to the Landlord importing the singular shall include the plural and vice versa, except where the context indicates otherwise

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. Following is a

summary of the submissions and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Is the Landlord entitled to an Order of Possession for unpaid rent or utilities?
2. If not, should the tenancy end in accordance with the 1 Month Notice?
3. Has the Landlord proven entitlement to monetary compensation?

Background and Evidence

The undisputed evidence was the Tenant entered into a month to month written tenancy agreement that began on September 1, 2012. Rent of \$495.00 was payable on or before the first of each month and on approximately September 1, 2012 the Tenant paid \$247.50 as the security deposit.

The Landlords testified that the Tenant has been served two eviction Notices. The first was a 1 Month Notice to end tenancy for cause which was personally served to the Tenant on May 12, 2015. The second Notice was a 10 Day Notice for unpaid rent which was posted to the Tenant's door on June 9, 2015.

The Landlord stated that on June 19, 2015 the Tenant came into her office and asked if he paid his rent for June 2015 if all this would go away. She said she told the Tenant he had to pay his rent because he was still occupying the rental unit and that she was still proceeding with the eviction. The Landlord testified that the Tenant refused to pay his rent and he now owes rent of \$495.00 for June 2015 plus \$495.00 for July 2015.

The Tenant testified that he had been out of town to attend his son's graduation and when he returned he found the 10 Day Notice taped to his door. He confirmed that he went to the Landlord's office on June 19, 2015, which is when he received the 10 Day Notice, with the intention to pay his rent. He said when the Landlord said she was proceeding with the evictions he felt there was no use in paying rent. The Tenant confirmed that he has not paid rent for June 2015 or July 2015.

The Tenant argued that he feels he has been treated unfairly. He submitted that he has been staying with friends for June and July because the Landlord is not friendly. He stated that they still have some possessions inside the rental unit and he still has the keys which he is hanging onto because he is a Person with Disabilities (PWD) and rental places are hard to find.

In response to the 1 Month Notice issued for Cause, the Tenant submitted that he goes out of his way to be quiet. He argued that it was unfair that the Landlord could make noise by cutting up scrap metal and storing cans outside near his window. He stated that he sometimes sleeps during the day and the Landlord makes noise that wakes him up so why should they evict him for making noise. He also argued that the Landlord is

trying to evict him because it is fishing season so they can get more money. He stated the Landlord tried to evict him the same time of year last year.

The Tenant's Advocate noted that the Tenant was currently staying in a temporary location and asked if the Landlord would entertain a settlement agreement that would allow the Tenant to continue occupying the rental unit.

The Landlord testified that they had tried to work with the Tenant previously; however, the noise issues continued. She noted that it is the resident caretaker and the other tenants who have had to put up with the Tenant's behaviour in the past and they are not willing to tolerate the Tenant's behaviour any longer. As a result, the Landlord wished to proceed with ending this tenancy as per their application for Dispute Resolution.

### Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

#### **Landlord's Application**

When a tenant receives a 10 Day Notice to end tenancy for unpaid rent they have (5) days to either pay the rent in full or to make application to dispute the Notice or the tenancy ends.

In this case the Tenant confirmed that he had received the 10 Day Notice on June 19, 2015, the same day he attended the Landlord's office. Therefore, the effective date of the Notice was **June 29, 2015**.

Section 46(5) of the Act stipulates that if a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by that date.

In this case, the Tenant neither paid the rent nor disputed the 10 Day Notice to end tenancy. Therefore, the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice, **June 29, 2015**, and must fully vacate the rental unit to which the notice relates pursuant to section 46(5) of the *Act*. Accordingly, I approve the Landlord's request for an Order of Possession.

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.

The Landlord claimed unpaid rent of \$495.00 that was due June 1, 2015, in accordance with section 26 of the Act. Based on the aforementioned, I award the Landlord unpaid rent for June 1, 2015, in the amount of **\$495.00**.

As noted above this tenancy ended **June 29, 2015**, in accordance with the 10 Day Notice. Therefore I find the Landlord is seeking money for use and occupancy of the unit and not rent for July 2015.

Notwithstanding the Tenant's submission that he has not resided at the rental unit, I find the Tenant still remained in possession of the rental unit because he left his possessions inside the rental unit and he still has the keys to the rental unit. Therefore, the Landlord will not regain possession of the unit until after service of the Order of Possession and will have to find a new tenant. The Landlord has the obligation to re-rent the unit as soon as possible to minimize their loss; therefore, I award the Landlord use and occupancy and any loss of rent up to **July 15, 2015**, in the amount of **\$247.50**. If the Landlord suffers additional loss regarding this tenancy, they are at liberty to file another application for that loss.

Section 72(1) of the Act stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) *[starting proceedings]* or 79 (3) (b) *[application for review of director's decision]* by one party to a dispute resolution proceeding to another party or to the director.

The Landlord has succeeded with their application; therefore, I award recovery of the **\$50.00** filing fee, pursuant to section 72(1) of the Act.

**Monetary Order** – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the Act to be offset against the Tenant's security deposit plus interest as follows:

Unpaid June 2015 Rent	\$ 495.00
Use and Occupancy to July 15, 2015	247.50
Filing Fee	<u>50.00</u>
<b>SUBTOTAL</b>	<b>\$ 792.50</b>
<b>LESS: Security Deposit \$247.50 + Interest 0.00</b>	<u><b>-247.50</b></u>
<b>Offset amount due to the Landlord</b>	<b><u>\$ 545.00</u></b>

### **Tenant's Application**

Where more than one Notice to End Tenancy comes under dispute, the Landlord has the burden to prove the tenancy should end for the reason(s) indicated on only one of the Notices. As indicated above, the Landlord has proven the reasons for issuing the 10 Day Notice to end tenancy for unpaid rent and has been granted an Order of Possession. Therefore, as this tenancy has ended in accordance with the 10 Day Notice, there is no need to analyze the 1 Month Notice as it is now moot.

As this tenancy ended due to the Tenant's failure to pay rent, I dismiss the Tenant's application to dispute the 1 Month Notice and decline to award the Tenant recovery of his filing fee.

### Conclusion

The Landlord has been successful with her application and has been granted an Order of Possession and a Monetary Order for unpaid rent and use and occupancy up to July 15, 2015.

As the Landlord has been granted payment for occupancy up to July 15, 2015, I issued the Landlord an Order of Possession effective **July 15, 2015, after service upon the Tenant**. In the event that the Tenant does not comply with this Order it may be filed with Supreme Court and enforced as an Order of that Court

The Landlord has been issued a Monetary Order for **\$545.00**. 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 British Columbia Small Claims Court and enforced as an Order of that Court.

I HEREBY DISMISS the Tenant's application, without 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: July 09, 2015

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Residential Tenancy Branch

