



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MT, CNR, OPR, MNR, MNSD, MNDC, RR, FF

### Introduction

This hearing dealt with applications from both the landlord and the tenant under the *Residential Tenancy Act* ("the *Act*"). The landlord applied for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- more time to make an application to cancel the landlord's 10 Day Notice to End Tenancy for Unpaid Rent ("the 10 Day Notice") pursuant to section 66;
- cancellation of the landlord's 10 Day Notice; and
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65.

### Preliminary Issue: Severance

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The tenant testified that she intends to vacate the residence immediately and sought to withdraw her application for more time to apply and to cancel the notice to end tenancy. The landlord proceeded with her application for an Order of Possession testifying that she had no notice to end tenancy or evidence that the tenant intended to vacate the residence prior to this hearing. The landlord's application for an Order of Possession was granted in light of the tenant's withdrawal of her application to cancel the notice to end tenancy. The landlord's application for a monetary order for unpaid rent and to retain all or a portion of the tenant's security deposit in satisfaction of that order was canvassed at this hearing.

The tenant's application for an order to all her to reduce her rent for repairs, services or facilities was dismissed with leave to re-apply in accordance with Rule 2.3 of the Dispute Resolution Rules of Procedure.

**2.3 Related issues** Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

The tenant applied to reduce her rent, raising claims that the landlord smoked in the residence; the landlord harassed her during her tenancy; the landlord turned the heat down and kept it too low within her rental unit; and also that there was black mold inside the rental unit. While the tenant has a right to her application for a rent reduction, the central and most time sensitive issue raised in both party's applications was whether the tenant had paid rent and whether, as a result of any failure to pay rent, the tenancy should come to an end and the landlord should be awarded a monetary order for those rental arrears.

I note that the timing and nature of the service of the tenant's materials to the landlord was a matter of some controversy. The landlord disputed receiving the tenant's materials within the timelines provided in the Act and in any clear or organized manner. Pursuant to the authority of the Director under the *Act* to determine procedural issues and make orders, I find that the matter of a potential rent reduction is only loosely related to the primary matters of this hearing. I find that the application for a rent reduction can be severed and addressed independently at a future date. Therefore, I dismiss the tenant's application for a rent reduction, allowing leave to reapply.

#### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent? Is the landlord entitled to a monetary award for unpaid rent? Is the landlord entitled to recover the filing fee for this application from the tenant?

#### Background and Evidence

This tenancy began on May 1, 2015 on a month to month basis with a rental amount of \$950.00 payable on the first of each month. The landlord testified that he continues to hold a security deposit in the amount of \$475.00 paid by the tenant on April 29, 2015. The landlord sought to retain that deposit in partial satisfaction of a monetary award for unpaid rent.

The landlord applied for an Order of Possession for unpaid rent for the month of June 2015. The landlord testified that the tenant did not pay rent of \$950.00 due on June 1, 2015. On June 2, 2015, the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent. The tenant confirmed receipt of the 10 Day Notice posted to her door. The tenant also confirmed that she did not pay rent on June 1, 2015. She testified that, prior to June 1, 2015 in anticipation of being unable to meet her obligation to pay rent, the tenant attempted to provide a cheque from a third party to the landlord. The landlord testified that he was concerned about the origins of the cheque - he returned it to the tenant and requested that the tenant provide him with rent in another accepted form.

The tenant confirmed that she did not pay rent in July or August 2015. She confirmed the testimony of the landlord that her May 2015 cheque was returned. She testified that she owed the landlord rent for May, June, and July 2015. She testified that she has not paid August 2015 as she intends to move out immediately.

The landlord testified that he had received no notice that the tenant intended on vacating the rental unit. The tenant confirmed that she had not advised the landlord that she was in fact vacating the rental unit.

The landlord sought a monetary award of \$3800.00 for the months of May 2015, June 2015, July 2015 and August 2015. He also sought to recover the filing fee for this application.

The tenant testified to personal circumstances that prevented her from paying her rent for this period of time (May through August 2015). She testified that she did make some attempts to provide some kind of payment or, at least explanation to the landlord with respect to the non-payment of rent.

### Analysis

Section 26(1) of the *Act* establishes that “a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent.” The tenant raised several issues about the living conditions in her suite over the course of her tenancy. In a separate hearing, her application for a rent reduction as a result of those conditions will be considered. However, section 26 of the *Act* requires that a tenant must pay rent regardless of the actions or inactions of the landlord. The recourse with respect to the conditions of the rental premises is to file for dispute resolution with the Residential Tenancy Branch as the tenant has done.

The tenant confirmed that she failed to pay the June 2015 rent within five days of receiving the 10 Day Notice to End Tenancy. The tenant withdrew her application pursuant to section 46(4) of the *Act* to cancel the landlord's 10 Day Notice. In these circumstances, the tenant is required to vacate the premises. As that has not occurred, the tenant continues to fail to pay rent and as the tenant has withdrawn her application to cancel the notice to end tenancy, I find that the landlord is entitled to a 2 day Order of Possession.

I note that the tenant has testified that she intends to vacate the residence. However, out of an abundance of caution, the landlord has requested the provision of an Order of Possession to ensure the tenant vacates the residence in compliance with this decision.

I find that the landlord is entitled to receive an order for unpaid rent in \$3800.00 for four unpaid months of rent at \$950.00 each month. The tenant testified at this hearing that she intends to vacate the rental unit immediately. However, she provided no written notice to the landlord nor did she advise the landlord verbally that she intended to vacate the residence at all. The tenant's application to cancel the 10 Day Notice to End Tenancy, withdrawn only at this hearing, is indicative of a lack of notice to the landlord. Given this lack of notice, I find that the landlord is entitled to recover August 2015 rent as he will require time to clear the rental unit and advertise to re-rent.

As the landlord was successful in his application, I find that the landlord is entitled to recover the filing fee from this application.

### Conclusion

The tenant's applications for more time to apply and to cancel the notice to end tenancy are withdrawn.

The tenant's application for a rent reduction pursuant to section 65 of the *Act* is dismissed with leave to reapply.

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant(s). Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary order in favour of the landlord as follows:

Item	Amount
Unpaid Rent – May 2015	\$950.00

Unpaid Rent – June 2015	950.00
Unpaid Rent – July 2015	950.00
Unpaid Rent – August 2015	950.00
Less Security Deposit	-475.00
Recovery of Filing Fee for this Application	50.00
<b>Total Monetary Order</b>	<b>\$3375.00</b>

The landlord is provided with this Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these Orders, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: August 12, 2015

---

Residential Tenancy Branch

