



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 0896572 BC Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes CNE, CNR, PSF, LRE, OPR, MNR, FF

### Introduction

This hearing dealt with two related applications. One was the landlord's application for an order of possession based upon a 10 Day Notice to End Tenancy for Non-Payment of Rent and a monetary order. The other was the tenants' application for orders setting aside the 10 Notice to End Tenancy for Non-Payment of Rent; compelling the landlord to provide services or facilities required by law; and limiting the landlord's right of entry.

The tenants had also applied for an order setting aside a Notice to End Tenancy because the tenant's employment with the landlord had ended. However, there is no evidence that the tenants were served with a 1 Month Notice to End Tenancy for End of Employment so that application is irrelevant.

The hearing was scheduled to start at 9:00 am. The tenants appeared at the start of the hearing; the landlord did not. The tenants provided proof of service of their application for dispute resolution and notice of hearing on the landlord. The landlord had also submitted evidence in response to the tenants' claim. As service on the landlord was established I started hearing the tenants' evidence.

The landlord joined the hearing at 9:14 am. He explained that he had had difficulty joining the call.

The tenants had named an office of the company as the sole respondent on their application for dispute resolution. With the consent of all parties the names of the respondent on the tenants' application was changed to the company name.

### Issue(s) to be Decided

- Is the 10 Day Notice to End Tenancy for Non-Payment of Rent dated July 10, 2015 valid?
- Do the tenants owe the landlord any rent and, if so, in what amount?
- Should an order compelling the landlord to provide services or facilities be granted and, if so, on what terms?
- Should an order limiting the landlord's right of entry be made and, if so, on what terms?

Background and Evidence

This tenancy commenced October 2, 2014, as a three month fixed term tenancy and has continued thereafter as a month-to-month tenancy. The monthly rent of \$850.00 is due on the first day of the month. The tenants paid a security deposit of \$425.00.

Some time after the start of the tenancy the female tenant started working for the landlord. At first it was just a few hours as a housekeeper. Later, her hours and her responsibilities were increased. She was paid on the first and fifteenth day of each month.

The female tenant testified her supervisor was M. Their arrangement was that half of the month's rent would be deducted from the pay cheque she received on the first of the month; and the last half would be deducted from the pay cheque she received on the fifteenth of the month. On the fifteenth the rent for the month would be paid in full.

In May M died. There appears to have been some confusion after his death. The tenant says she did not get paid on June 1 and she resigned on June 7.

The witness for the landlord was M's boss. He testified that while he was alive M took care of the administrative details and he was not directly involved.

The tenants did not pay the June or July rent when it became due. The female tenant testified that was because they did not know the amount of her outstanding pay so did not know the balance that was actually due.

On July 7 the landlord sent the tenants a memo outlining its' view of the situation:

- The female tenant's net pay, after payroll deductions, was \$649.55.
- The landlord applied \$425.00 to the May rent.
- The landlord applied the balance of \$224.55 to the June rent.
- The landlord asked for payment of the balance of the June and July rent, a total of \$1475.45.

On July 10 the landlord issued and served the tenants with a 10 Day Notice to End Tenancy for Non-Payment of Rent claiming arrears of rent in the amount of \$1475.45.

The tenants filed this application for dispute resolution on July 13, within the time required. The tenant's were of the view that the May rent was paid in full and the \$425.00 should have been applied to the June rent.

Since receiving the July 7 letter the tenants have not paid anything towards the rent. They explained that they did not want pay rent twice.

The landlord claims arrears up to and including September, 2015.

Analysis

This is not an arrangement where accommodation was provided as part of an employment contract so the tenancy agreement and the female tenant's employment contract are two separate contracts.

The second page of the notice to end tenancy sets out that a tenant may dispute a notice if they have proof that the rent was paid or they have an order from an arbitrator giving them permission to keep all or part of the rent. The notice also sets out that: "The tenant is not entitled to withhold rent unless ordered by an arbitrator."

When a tenant disputes a notice the onus is on the landlord to prove, on a balance of probabilities, that there were arrears of rent owed when the notice to end tenancy was issued and served on the tenant and that the arrears were not paid within five days thereafter.

The only dispute regarding rent is whether the May rent had been paid in full with the \$425.00 deduction from female tenant's May 15 pay cheque. If it had and the \$425.00 was applied to the June rent, as the tenants argued it should have been, the arrears of rent for June as of July 10 would have been \$200.24 ( $\$850.00 - \$649.55 = \$200.45$ ).

The tenants should have paid the landlord the \$200.45 which they argued was all that was owed and filed a dispute as to whether anything more was owed for May and June.

The tenants had no legal right to withhold payment of the July, August or September rent.

The evidence from the landlord and the tenant is that there were arrears of rent owed when the 10 Day Notice to End Tenancy for Non-Payment of Rent was served on the tenants and that those arrears were not paid in full within the five day period. The 10 Day Notice to End Tenancy for Non-Payment of Rent dated July 10, 2015, is valid. Accordingly, I dismiss tenants' application and order that the landlord is entitled to an order of possession effective two days after service on the tenants.

With regard to the amount of arrears the landlord is not able to say whether the tenants' description of the arrangements with M was accurate or not. Accordingly, I accept the tenants' version of events and find that the May rent was paid in full.

I find that the arrears of rent for June were \$200.45 and that the arrears of rent for July, August and September total \$2250.00.

The written tenancy agreement does include a provision for a late payment fee but it is higher than the \$25.00 per month maximum permitted by the *Residential Tenancy Regulation*. The rent was late in June, July, August and September and I award the landlord \$100.00 for late payment fees ( $\$25.00 \times 4 = \$100.00$ ).

Finally, as the landlord was successful on its' application it is entitled to reimbursement from the tenants of the \$50.00 fee it paid to file the application.

In summary I find that the landlord has established a total monetary claim of \$ 2600.45 comprised of arrears of rent in the amount of \$2450.45, late fees in the amount of \$100.00 and the \$50.00 fee paid by the landlord for this application. Pursuant to section 72 of the *Residential Tenancy Act* I order that the landlord retain the security deposit of \$450.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$2150.45.

As the tenancy has ended there is no need to make a determination of the tenants' application for orders compelling the landlord to provide certain services or facilities or limiting the landlord's right of entry.

#### Conclusion

- a. An order of possession effective two days after service on the tenants 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 in the amount of \$2150.45 (as calculated above) 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: September 22, 2015

---

Residential Tenancy Branch

