



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      Landlord: OPR, OPC, MNR, MNDC, FF  
Tenant: MT, CNE, CNC, DRI, MNDC, O, FF

### Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord sought an order of possession and a monetary order. The tenant sought more time to cancel a notice to end tenancy; to cancel two notices to end tenancy; dispute an additional rent increase; and a monetary order.

The hearing was conducted via teleconference and was attended by the three landlords and the tenant.

At the outset of the hearing the tenant clarified that his monetary claim was for wages for work that he completed for the landlord. I find that work completed by a tenant for remuneration does not fall within the jurisdiction of the *Residential Tenancy Act (Act)* and as such I decline to hear the tenant's monetary claim.

Also at the outset of the hearing the tenant confirmed that he did not receive a 1 Month to End Tenancy that identified that the landlord was trying to end the tenancy based on an end to his employment. As such, I have amended the tenant's Application to exclude his request to cancel a 1 Month Notice to End Tenancy for End of Employment.

Further, I confirmed with the tenant that because his filing fee was waived and did not pay one he would not be entitled to claim to recover the fee from the landlord. Therefore, I further amend the tenant's Application to exclude the matter of the filing fee.

The landlord confirmed that in their original Application they had included a claim for unpaid rent that included the month of October 2015. They submit that they had included this amount because their original hearing date was set for October 2015 but when it was crossed with the tenant's Application to be heard on this date they no longer sought rent for the month of October. I amended their application to reduce their financial claim by \$750.00.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent and/or for cause; to a monetary order for unpaid rent; and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 46, 47 55, 67, and 72 of the *Act*.

It must also be decided if the tenant is entitled to more time to apply to cancel a notice to end tenancy; to cancel a 1 Month Notice to End Tenancy for Cause; and to cancel an additional rent increase, pursuant to Sections 40, 47, 66, 67, and 72 of the *Act*.

### Background and Evidence

The parties agree the tenancy began sometime in mid-April 2015 as a month to month tenancy and that rent was due by the 1<sup>st</sup> of each month. The parties disagree with the amount of rent. No written tenancy agreement was entered into.

The landlord submits that rent for the rental unit is \$750.00. The landlord goes on to say that the tenant was expected to pay \$375.00 per month and that he would complete work on the residential property to cover the additional \$375.00 per month.

The tenant submits that he was told that rent was \$375.00 and that he would be paid a wage of \$10.25 per hour. He states that he was never told that he had to give up any of his wages towards the rent payment.

The landlord also stated that they had collected a security deposit of \$162.50 from the tenant but that they later returned it to the tenant. The tenant confirms that the security deposit was paid but he never understood that he received the security deposit back from the landlord, even though he had received cash from the landlord.

The landlord has provided into evidence the following relevant documents:

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent issued on July 3, 2015 with an effective vacancy date of July 13, 2015 due to \$375.00 in unpaid rent;
- A copy of a 1 Month Notice to End Tenancy for Cause issued on July 31, 2015 with an effective vacancy date of August 31, 2015 citing the tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent issued on August 2, 2015 with an effective vacancy date of August 13, 2015 due to \$1,125.00 in unpaid rent.

The tenant confirmed that he received the 1<sup>st</sup> 10 Day Notice to End Tenancy for Unpaid Rent on July 3, 2015 and that he submitted his Application on July 7, 2015. The tenant also confirmed that he received the landlord's 1 Month Notice to End Tenancy on July 31, 2015 and that his Application was amended to include the 1 Month Notice on

August 13, 2015. The tenant submitted that he had an advocate submit his Applications and was not sure why it took his advocate 14 days to submit the amendment to the original Application.

The tenant also confirmed that he received the 2<sup>nd</sup> 10 Day Notice on August 2, 2015. The tenant confirmed that the Ministry of Social Development and Social Innovation had paid rent of \$375.00 to the landlord but that since he took the Notices to End Tenancy into the Ministry they have stopped paying his rent and so the landlord has not received any payments at all for August and September 2015.

### Analysis

Section 66 of the *Act* states the director may extend a time limit established under the *Act* only in exceptional circumstances. Residential Tenancy Policy Guideline #36 states that “exceptional” means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend the time limit. The Guideline goes on to say that exceptional implies that the reason for failing to do something at the time required is very strong and compelling.

Section 46 of the *Act* states a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy on a date that is not earlier than 10 days after the date the tenant receives the notice. A notice under this section must comply with Section 52 of the *Act*.

Section 46(4) allows the tenant to either pay the rent or file an Application for Dispute Resolution to dispute the notice within 5 days of receipt of the notice.

Section 46(5) states that if a tenant who has received a notice under this section does not pay the rent or make an Application for Dispute Resolution to dispute the notice within the allowed 5 days the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit.

I find the tenant’s Application for more time to dispute a Notice to End Tenancy, in relation to the 1<sup>st</sup> 10 Day Notice was filed within the required 5 days allowed under Section 46(4). However, I note the tenant did not apply to cancel the 10 Day Notice to End Tenancy for Unpaid Rent issues on July 3, 2015.

While the tenant did not dispute either of the 10 Day Notices to End Tenancy for Unpaid Rent, the landlord is still obligated, under Section 46, to establish that rent was overdue on the date the Notice was issued.

There is a general legal principle that places the burden of proving a loss on the person who is claiming compensation for the loss. In regards to a claim for unpaid rent the burden of proving that amount of rent that was not paid is predicated on the amount of rent that was agreed to at the start of the tenancy. As such, as the landlord is making

the claim to end the tenancy for unpaid rent and compensation for lost rent the burden rests with him to establish the amount of rent that was agreed upon.

Section 13 of the *Act* stipulates that the landlord is required to prepare a tenancy agreement in writing and that he must, within 21 days after the parties enter into a tenancy agreement, provide the tenant with a copy of the tenancy agreement.

When two parties provide equally plausible but differing accounts of an agreement, the party with the burden must provide additional evidence to establish their position. In this case, the landlord has failed to provide a copy of a tenancy agreement or any other evidence to confirm the rent amount to be \$750.00.

In addition landlords are permitted under Section 19 of the *Act* to collect a security deposit in an amount up to ½ month's rent. Both parties agreed the security deposit that had been paid was in the amount of \$162.50. As such, I find the only evidence agreed to by both parties (the amount of the security deposit) implies the amount of rent that was agreed upon was \$375.00 per month. I find the landlord cannot unilaterally increase the rent to \$750.00.

As a result, and in conjunction with the agreement of both parties that the tenant had paid \$375.00 for the month of July 2015 I find that there was no outstanding rent on July 3, 2015 when the 1<sup>st</sup> 10 Day Notice was issued. I therefore cancel the 10 Day Notice to End Tenancy for Unpaid Rent issued by the landlord on July 3, 2015.

However, as the tenant confirmed that the Ministry has not provided payment to the landlord of any of the amount of rent for the month of August 2015 I find that at the time the landlord issued the 10 Day Notice on August 2, 2015 there was \$375.00 in unpaid rent.

As such and because the tenant did not dispute either of the Notices for unpaid rent, I find the landlord has established that the 10 Day Notice to End Tenancy for Unpaid Rent issued on August 2, 2015 is valid and enforceable and the tenant must vacate the rental unit.

Based on the above I find the amount of rent owed to the landlord for the period of July to September is \$750.00 (July 2015 - \$0.00; August 2015 - \$375.00; and September 2015 - \$375.00).

As I have determined the 10 Day Notice to End Tenancy for Unpaid Rent issued on August 2, 2015 is a valid notice and the tenancy has ended, I make no findings on the 1 Month Notice to End Tenancy for Cause issued by the landlord on July 31, 2015. However, I note that per the tenant's testimony the tenant's amendment that included seeking to cancel the 1 Month Notice was filed on August 13, 2015 or 14 days after receipt of the 1 Month Notice. Section 47(4) allows a tenant 10 Days to submit an Application to dispute a 1 Month Notice. As such, I find the tenant had failed to submit

their amendment seeking to cancel the 1 Month Notice. Therefore the tenant would be required to vacate the rental unit in accordance with the 1 Month Notice as well.

### Conclusion

I find the landlord is entitled to an order of possession effective **two days after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the landlord is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$800.00** comprised of \$750.00 rent owed and the \$50.00 fee paid by the landlord for this application.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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 10, 2015

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Residential Tenancy Branch

