



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 464263 BC LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF (Landlord's Application)  
CNR (Tenant's Application)

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the "Application") made by the Tenant on September 21, 2015 and the Landlord on October 1, 2015.

The Landlord applied for an Order of Possession and a Monetary Order for unpaid rent, to keep the Tenant's security deposit, and to recover the filing fee from the Tenant. The Tenant applied to cancel the notice to end tenancy.

An agent for the company Landlord, who was also named on the Tenant's Application, appeared for the hearing with his assistant. The Tenant appeared for the hearing with her boyfriend who was a witness. All participants provided affirmed testimony and both parties submitted a copy of the notices to end tenancy into evidence prior to the hearing.

No issues in relation to the service of documents and the parties' Application pursuant to the *Residential Tenancy Act* (the "Act") were raised during the hearing. The parties were informed of the instructions for the conduct of the proceedings and no questions were raised about the process. The parties were given an opportunity to present evidence and make submissions to me in relation to the evidence provided.

### Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession for unpaid rent?
- Is the Tenant entitled to cancel the notice to end tenancy?
- Is the Landlord entitled to a Monetary Order for unpaid rent?
- Is the Landlord entitled to keep the Tenant's security deposit in partial satisfaction of the monetary claim for unpaid rent?

### Background and Evidence

The parties agreed that this tenancy started on June 1, 2015 for a fixed term of six months due to end on November 31, 2015. A written tenancy agreement was completed and rent is payable in the amount of \$700.00 on the first day of each month. The Tenant paid the Landlord \$350.00 as a security deposit at the start of the tenancy which the Landlord still retains.

The Landlord's agent's assistant testified that the Tenant failed to pay full rent for June 2015 and for August 2015. By the end of August 1, 2015, the Tenant was in rental arrears in the amount of \$1,100.00. As a result, the Tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") which was posted on the Tenant's door on August 24, 2015.

The Landlord's agent's assistant testified that the Tenant then failed to pay any rent for September 2015 bringing the total rent arrears to \$1,800.00. However, the Tenant did make a partial payment of \$350.00 on September 9, 2015 leaving an outstanding balance of \$1,450.00. The Tenant was then served with a second Notice on September 10, 2015 for this amount which had a vacancy date of September 21, 2015. The Landlord's agent explained that the Tenant also failed to pay October and November 2015 rent. The total amount of rental arrears sought from the Tenant is \$2,850.00.

The Tenant confirmed receipt of both Notices and confirmed the total amount of rental arrears that were outstanding. The Tenant and witness testified that the Landlord had failed to provide them with a clean rental unit at the start of the tenancy and had failed to deal with extensive mold problems throughout the rental unit. The Tenant alleged that the Landlord had cut the power to her suite for a period of a week during which time she lost food items that had spoilt.

### Analysis

Section 26(1) of the Act requires a tenant to pay rent when it is due under a tenancy agreement whether or not the landlord complies with the Act, unless the Tenant has authority to not pay it under the Act. In addition, Sections 46(4) and (5) of the Act states that within five days of a tenant receiving a Notice, a tenant must pay the overdue rent or make an Application to dispute the Notice; if the tenant fails to do either, then they are conclusively presumed to have accepted the Notice and they must vacate the rental unit on the date to which the Notice relates. In this case, the Tenant did not dispute that she had not paid rent to the Landlord for the amount of \$2,850.00. The Tenant testified that she did not pay rent because the Landlord did not comply with the Act in doing

repairs, cutting off her power, and failing to provide her with a clean rental unit. In this respect, the Act does not allow the Tenant to withhold rent for these reasons.

Furthermore, I find the Tenant applied to dispute both Notices outside of the five day time limit provided under Section 46(4) of the Act. Therefore, the Landlord is entitled to an Order of Possession to end the tenancy. As the vacancy date on the Notices has now passed, the Landlord is entitled to a two day Order of Possession. This order must be served to the Tenant and may then be filed and enforced in the Supreme Court of British Columbia as an order of that court.

The Landlord is also entitled to unpaid rent in the amount of **\$2,850.00**. As the Landlord has been successful in this matter, the Landlord is also entitled to recover the **\$50.00** Application filing fee pursuant to Section 72(1) of the Act. Therefore, the total amount payable by the Tenant to the Landlord is **\$2,900.00**. As the Landlord already holds **\$350.00** of the Tenant's security deposit, I order the Landlord to retain this amount in partial satisfaction of the claim awarded. As a result, the Landlord is awarded a Monetary Order for the outstanding balance of **\$2,550.00**. This order must be served on the Tenant and may then be enforced in the Provincial Court (Small Claims) as an order of that court if the Tenant fails to make payment.

### Conclusion

The Tenant has breached the Act by failing to pay rent. As a result, the Landlord is granted an Order of Possession effective two days after service on the Tenant. The Landlord can keep the Tenant's security deposit and is issued with a Monetary Order for the remaining balance of \$2,550.00. The Tenant's Application is dismissed without leave to re-apply.

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: November 23, 2015

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Residential Tenancy Branch

