



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, OPR, MNR, MDSD & FF

### Introduction

The Application for Dispute Resolution filed by the tenant seeks an order to cancel the 10 day Notice to End Tenancy dated October 14, 2015.

The Application for Dispute Resolution filed by the landlord makes the following claims:

- a. An Order for Possession for non-payment of rent
- b. A monetary order in the sum of \$3239.53 for unpaid rent
- c. An order to retain the security deposit
- d. An order for the early end of the tenancy.
- e. An order to recover the cost of the filing fee

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The parties acknowledged they had received the documents of the other party.

I find that the 10 day Notice to End Tenancy was served on the Tenant on October 15, 2015. Further I find that the Application for Dispute Resolution/Notice of Hearing filed by the tenant was sufficiently served on the landlord on October 16, 2015. I find that the Application for Dispute Resolution/Notice of Hearing filed by the landlord was personally served on the tenant on October 19, 2015.

### Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the 10 day Notice to End Tenancy dated October 14, 2015?
- b. Whether the landlord is entitled to an Order for Possession?
- c. Whether the landlord is entitled to A Monetary Order and if so how much?
- d. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- e. Whether the landlord is entitled to an order for the early end of the tenancy?
- f. Whether the landlord is entitled to recover the cost of the filing fee?

### Background and Evidence

The tenancy began in 1994 when the tenant and then landlord entered into a written tenancy agreement that provided that the rent was \$450 per month payable in advance on the first day of each month. The tenant paid a security deposit of \$225 at the start of the tenancy.

On November 27, 2014 the then landlord served the tenant a Notice of Rent Increase that increased the rent by \$17.17 per month from \$679 per month to \$696 month commencing March 1, 2015. The \$.17 was rounded downwards. The tenant acknowledged he received this Notice. The tenant submits this is an illegal rent increase. The maximum allowable rent increase for rent increases starting in 2015 is 2.5%. Thus the maximum the landlord was entitled to charge was \$16.97. The maximum rent increase allowed by the Regulations would raise the rent to \$695.97. The tenant has refused to pay any part of the rent increase, not just the \$.03 excess.

The landlord purchased the property and took possession in early 2015. The tenant told the landlord he could not pay the rent increase. The landlord testified he agreed with the tenant he could have 6 months before he would have to start paying the rent with the rent increase. However, at that time the tenant would have to pay the full rent plus make arrangement to pay the accumulated increase. The tenant denies this stating he was never required to pay the rent increase. .

In a letter dated July 18, 2015 the landlord wrote to the tenant "Please be advised that beginning September 1, 2015 rent cost of you suite will be raised to \$695.97 per month. I send to you a notice dated May 7, 2015."

The landlord sent the tenant another Notice of Rent Increase that is stated to be the photocopy of the November 27, 2015 Rent Increase although it purports to increase the rent to \$696.17 (not rounded down as the previous one was) and has a date of August 15, 2015.

The tenant's materials produce a receipt dated September 1, 2015 which indicates he paid rent of \$695.17.

The tenant failed to pay the rent for October when due on October 1, 2015. The landlord served the 10 day Notice to End Tenancy on the tenant on October 15, 2015. The tenant disputes this testimony. However, the tenant filed his application to cancel the Notice on October 16, 2015. For the purpose of this case I determined the tenant received the 10 day Notice to End Tenancy on October 16, 2015. The tenant told the landlord his wallet was stolen. The tenant paid \$679 to the landlord with a payment from the tenant on October 26, 2015 and a payment from the Ministry in the sum of \$328 on October 28, 2015. The tenant has paid rent of \$679 for November and December.

#### Tenant's Application – Application to Cancel the 10 day Notice to End Tenancy

Section 46 of the Residential Tenancy Act provides as follows

##### **Landlord's notice: non-payment of rent**

- 46** (1) 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 effective on a date that is not earlier than 10 days after the date the tenant receives the notice.
- (2) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.
- (3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.
- (4) Within 5 days after receiving a notice under this section, the tenant may
- (a) pay the overdue rent, in which case the notice has no effect, or
  - (b) dispute the notice by making an application for dispute resolution.
- (5) 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.

(6) If

(a) a tenancy agreement requires the tenant to pay utility charges to the landlord, and

(b) the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them,

the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

Section 52 of the Act provides:

**Form and content of notice to end tenancy**

**52** In order to be effective, a notice to end a tenancy must be in writing and must

(a) be signed and dated by the landlord or tenant giving the notice,

(b) give the address of the rental unit,

(c) state the effective date of the notice,

(d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and

(e) when given by a landlord, be in the approved form.

After carefully considering all of the evidence I determined the landlord has established sufficient cause to end the tenancy for non-payment of rent for the following reasons:

- The rent was due on the first of the month. The landlord served the 10 day Notice to End Tenancy on October 16, 2015. The tenant had 5 days to pay the rent in full in which case the Notice would be void. Even if one accepts that the proper rent was \$679 per month the rent was not paid in full until October 28, 2015. Where a tenant pays the arrears after the 5 day period a landlord has an election to make. The landlord can reinstate the tenancy or accept the payment making it clear he wants the tenant to vacate at the end of the rental payment period. The landlord has stated that he does not wish to reinstate the tenancy and that the tenant must vacate the rental unit.
- The Notice to End Tenancy is valid as it meets the requirements of section 52 of the Act. The Notice to End Tenancy includes a claim for the rent increase. Even if that rent increase was not valid, this does not relieve the tenant from paying the actual rent which is due.
- One can sympathize with the tenant's situation. He is a long term tenant and was not able to pay the rent because of the theft of his wallet. At one time the Residential Tenancy Act gave an arbitrator the power to grant an extension of

time to pay the rent where the tenant made such an application. That power is no longer in the legislation and an arbitrator no longer has the power to extend the time to pay the rent even where hardship might occur. Such an order granting an extension of time to pay the rent would be necessary where the 5 day period has passed and where the tenant has subsequently paid the rent. The only possible way for an extension of time in a situation such as this is if the landlord consents and agrees not to rely on his legal rights.

- Policy Guideline #32 includes the following

### **Application to Extend the Time to Pay Rent**

An arbitrator has no jurisdiction to extend the time within which a tenant may pay overdue rent unless one of the following has occurred:

1. The landlord specifically consents to the extension of time being considered and granted.
2. The tenant has deducted the unpaid amount because the tenant believed that the deduction was allowed for emergency repairs or under an arbitrator's order.

A landlord has no legal obligation to agree to extend the time to pay the rent. Any such agreement must be voluntary. .

The landlord stated that he wanted to end the tenancy and was not prepared to agree to extend the time to pay the rent. The tenancy had broken down and he submitted that as the tenant failed to pay the rent within the 5 days that would void the Notice he is legally entitled to an Order for Possession.

As a result I order that the application of the tenant be dismissed. The tenancy shall come to an end.

### Order for Possession:

The Residential Tenancy Act provides that where a landlord has made an oral request for an Order for Possession at a hearing where an arbitrator has dismissed a tenant's application to set aside a Notice to End Tenancy, the arbitrator must grant an Order for Possession. The landlord made this request at the hearing. As a result I granted the landlord an Order for Possession effective December 31, 2015.

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

Whether the Notice of Rent Increase dated November 27, 2015 is void?

The tenant is submits the Notice of Rent Increase is void or unenforceable where the rent increase set out in the Notice of Rent Increase is more than the maximum allowable set by Regulations..

Section 41 to 43 provide as follows:

**Part 3 — What Rent Increases Are Allowed**

....

**41** A landlord must not increase rent except in accordance with this Part.

**Timing and notice of rent increases**

**42** (1) A landlord must not impose a rent increase for at least 12 months after whichever of the following applies:

(a) if the tenant's rent has not previously been increased, the date on which the tenant's rent was first established under the tenancy agreement;

(b) if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this Act.

(2) A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.

(3) A notice of a rent increase must be in the approved form.

(4) If a landlord's notice of a rent increase does not comply with subsections (1) and (2), the notice takes effect on the earliest date that does comply.

**Amount of rent increase**

**43** (1) A landlord may impose a rent increase only up to the amount

(a) calculated in accordance with the regulations,

(b) ordered by the director on an application under subsection (3),  
or

(c) agreed to by the tenant in writing.

(2) A tenant may not make an application for dispute resolution to dispute a rent increase that complies with this Part.

(3) In the circumstances prescribed in the regulations, a landlord may request the director's approval of a rent increase in an amount that is

greater than the amount calculated under the regulations referred to in subsection (1) (a) by making an application for dispute resolution.

(4) [Repealed 2006-35-66.]

(5) If a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase.

After carefully considering the legislation and the submissions of both parties I determined that the failure of the landlord to accurately calculate and set out in the Notice the amount of rent increase does not make the Notice void or unenforceable for the following reasons:

- The legislation provides that a landlord may impose a rent increase only up to the amount “calculated in accordance with the regulations.” It does not provide that that a Notice of Rent Increase is void or unenforceable where the amount set out in the Notice exceeds what is permitted.
- The legislation provides with two methods to remedy the situation where the Notice provides for a rent increase that exceeds the amount permitted. The tenant could make an application under section 43(2) as the rent increase would not apply with the Act. Alternatively, the tenant may deduct any increase that does not comply with the Act from the rent or otherwise recover the increase.
- There is solid policy reason for such an interpretation as to void the Notice would be unrealistically formalistic. In this case the previous landlord gave a Notice of Rent Increase that rounded downward and set the new rent of \$696. The landlord was entitled to a rent increase of \$695.97 which was only \$.03 more per month than what was permitted.

As a result I determine the Notice of Rent Increase is not void. I determined It is enforceable to the amount permitted by the legislation which is \$695.97 which amounts to an increase of \$16.97 per month.

There is a dispute between the parties as to whether the tenant was allowed to start paying the rent increase on September 1, 2015 or whether he was responsible for the rent increase from March to and including August. The letter from the landlord to the tenant dated July 18, 2015 states “beginning September 1, 2015 the cost of your suite will be raised to \$695.17 per month...” The letter does not make mention of any arrears. In the circumstances I determined find that the landlord agree to release the tenant from the rent increase for the first 6 months. However, the landlord is entitled to recover the rent increase of \$16.97 for November and December.

Landlord's Application - Analysis - Order of Possession:

For the reasons stated above I determined the landlord was entitled to an Order for Possession. Accordingly, I granted the landlord an Order for Possession effective December 31, 2015.

I dismissed the landlord's application for an early termination of the tenancy as insufficient evidence was presented by the landlord for such an order.

Analysis - Monetary Order, Cost of Filing fee & Security Deposit:

I determined the tenant has failed to pay the rent for the month(s) of \$16.97 for the months of November and December for a total of \$33.94. I dismissed the landlord's claim of \$1000 to pay the cost of the landlord's agent. This is not a claim that can be brought in a Residential Tenancy hearing as it relates to the cost of litigation. The only jurisdiction an arbitrator has dealing with cost is the cost of the filing fee. I granted the landlord a monetary order in the sum of \$33.94 plus the sum of \$50 in respect of the filing fee for a total of \$83.94 such sum may be deducted from the security deposit.

Conclusion:

In summary I ordered that the tenant's application to cancel the 10 day Notice to End Tenancy be dismissed. I granted an Order for Possession effective December 31, 2015. I ordered that the tenant pay to the landlord the sum of \$83.94 such sum may be deducted from the security deposit.

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: December 15, 2015

---

Residential Tenancy Branch



