



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding WALL FINANCIAL CORPORATION  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR; CNC, CNR

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- an order of possession for unpaid rent pursuant to section 55; and
- a monetary order for unpaid rent pursuant to section 67.

This hearing also dealt with the tenant's application pursuant to the Act for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46; and
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47.

The tenant attended the hearing. The landlord's agent attended the hearing. Both parties were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The parties acknowledged receipt of the opposing parties' dispute resolution packages. The tenant acknowledged receipt of the 10 Day Notice.

### Landlord's Amendment

At the hearing, the landlord asked to amend its application to include rent arrears for January 2016 in the amount of \$855.00.

Paragraph 64(3)(c) allows me to amend an application for dispute resolution.

As the tenant reasonably ought to have known that this amount would be owed if she continued to occupy the rental unit, I have allowed the amendment as there is no undue prejudice to the tenant.

Issue(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an order of possession? Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an order of possession? Is the landlord entitled to a monetary award for unpaid rent?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

This tenancy began in September or October 2014. Initially, monthly rent was \$840.00. Effective 1 December 2015, monthly rent is \$855.00 and due on the first. The landlord continues to hold the tenant's security deposit in the amount of \$420.00 and pet damage deposit in the amount of \$200.00 (the deposits).

The landlord and tenant entered into a tenancy agreement dated 19 September 2014. I was provided with a copy of the tenancy agreement. The initial parties to the tenancy agreement were the tenant and RT as cotenants and the landlord. On or about 6 December 2014, by way of a written amendment, RT was removed as a tenant and WG was added to the tenancy agreement. This amendment was effective 31 December 2014. On or about 31 October 2015, WG vacated the rental unit. WG has not provided written notice to end the tenancy. Clause 9 of the tenancy agreement prohibits additional occupants residing in the rental unit without written permission from the landlord.

On 28 October 2015, the landlord issued the 1 Month Notice to the tenant. The 1 Month Notice set out an effective date of 30 November 2015.

On 2 December 2015, the landlord issued the 10 Day Notice to the tenant. The landlord served the 10 Day Notice by posting that notice to the tenant's door. The 10 Day Notice set out an effective date of 15 December 2015. The 10 Day Notice set out that the tenant had failed to pay \$855.00 to the landlord that was due 1 December 2015.

The landlord did not authorize the tenant to add an additional tenant to the rental agreement. The tenant testified that as a result of the landlord's refusal to allow an additional tenant, the tenant was unable to pay her rent.

The tenant asked for her deposits to be applied to her rent arrears. The landlord refused.

The tenant has not paid any amount in rent since the issuance of the 10 Day Notice. The agent testified that she knew of no reason that would entitle the tenant to deduct any amount from rent.

### Analysis

Subsection 26(1) of the Act sets out:

A tenant must pay rent when it is due under the tenancy agreement....unless the tenant has a right under this Act to deduct all or a portion of the rent.

There are various provisions of the Act that permit a tenant to deduct amounts from rent:

- Subsection 19(2) permits a tenant to deduct amounts from rent to recover the excess amounts of a security deposit that did not comply with the Act.
- Subsection 33(7) permits a tenant to deduct amounts from rent for the costs of emergency repairs.
- Subsection 43(5) permits a tenant to deduct the amount of a rent increase which did not comply with the Act from rent.
- Subsection 51(1.1) permits a tenant to deduct one month rent where the landlord has issued a notice to end tenancy pursuant to section 49.
- Subsection 65(1) and subsection 72(2) permit a tenant to deduct rent to recover an amount awarded in an application before this Branch.

There are no other deductions from rent permitted under the Act or regulations.

Under the tenancy agreement, rent in the amount of \$855.00 is due on the first of the month. The tenant has not provided any evidence that indicates she was permitted to deduct any amount from rent. The tenant admits that she did not pay rent when it was due on 1 December 2015 and has not paid any amount towards this rent. The tenant submits that she could not pay rent as the landlord would not grant its permission for the tenant to have a roommate. The landlord's lack of permission does not excuse the tenant from paying her rent when due. Accordingly, the tenant was liable to pay her rent in full on 1 December 2015.

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

As the tenant has failed to pay her rent in full when due, I find that the 10 Day Notice issued 2 December 2015 is valid and dismiss the tenant's application to cancel the 10 Day Notice without leave to reapply. As the tenant's application to cancel the 10 Day Notice is dismissed, the landlord was entitled to possession of the rental unit on 15 December 2015, the effective date of the 10 Day Notice. As this date has now passed, the landlord is entitled to an order of possession effective two days after it is served upon the tenant(s).

The tenant admits that she has not paid any amount for her use of the rental unit in December 2015 or January 2016. I find that the landlord is entitled to this amount as the tenant occupied the rental unit as at 1 December 2015 and 1 January 2016. I issue a monetary order in the landlord's favour in the amount of \$1,710.00, to enable the landlord to recover unpaid rent from the tenant.

As the tenancy is ending on the basis of the 10 Day Notice, there is no need for me to consider the 1 Month Notice.

Although the landlord has not applied to retain the tenant's deposits, using the offsetting provisions in section 72 of the Act, I allow the landlord to retrain the tenant's deposits in partial satisfaction of the monetary order.

### Conclusion

The tenant's application is dismissed without leave to reapply.

The landlord is provided with a formal copy of an order of possession. 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 the landlord's favour in the amount of \$1,090.00 under the following terms:

Item	Amount
Unpaid December Rent	\$855.00
Unpaid January Rent	855.00

Offset Deposits Amount	-620.00
<b>Total Monetary Order</b>	<b>\$1,090.00</b>

The landlord is provided with this order in the above terms and the tenant(s) must be served with this order as soon as possible. Should the tenant(s) fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial 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 subsection 9.1(1) of the Act.

Dated: January 07, 2016

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Residential Tenancy Branch

