



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding HOMELIFE GLENAYRE REALTY CHILLIWACK LTD. & SHIRLY MAY  
BLANK  
and [tenant name suppressed to protect privacy]

## **DECISION**

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| <u>Dispute Codes</u> | Tenant CNR, CNL, FF<br>Landlord OPR, MNR, FF |
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### Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlords and the Tenants.

The Landlords filed seeking an Order of Possession, a monetary order for unpaid rent and to recover the filing fee for this proceeding.

The Tenants filed to obtain an order to cancel the Notices to End Tenancy and to recover the filing fee for this proceeding.

Service of the hearing documents by the Landlords to the Tenants were done by registered mail on November 13, 2015 in accordance with section 89 of the Act.

Service of the hearing documents by the Tenants to the Landlords were done by registered mail on November 6, 2015 in accordance with section 89 of the Act.

Both parties confirmed the receipt of the other parties' hearing package.

### Preliminary Matters

The parties said the tenancy had ended November 27, 2015; therefore the Tenants' application to cancel the Notices to End Tenancy and continue the tenancy is not required. Consequently I cancel the Tenants' application and order the Tenants' to bear the cost of the application fee of \$50.00 that they have already paid.

### Issues to be Decided

Landlord:

1. Are the Landlords entitled to an Order of Possession?
2. Is there unpaid rent and if so how much?
3. Are the Landlords entitled to compensation for unpaid rent and if so how much?

### Background and Evidence

This tenancy started on March 1, 2014 as a verbal month to month tenancy. The Tenant said rent is \$1,350.00 per month, payable in part twice a month on the 1<sup>st</sup> and 15<sup>th</sup>. The Landlord said the rent is \$1,150.00 and the occupants in the basement suite contribute \$200.00 per month towards utilities. No security or pet deposits were paid. The Tenancy ended on November 27, 2015.

The Landlord said she issued a 2 Month Notice to End Tenancy for her daughter to move into the rental unit dated September 20, 2015. The effective vacancy dated was December 1, 2015. The Landlord said there was unpaid rent for July, 2015, August, 2015 and September, 2015 but the Landlord said she did not issue a 10 Day Notice to End Tenancy for unpaid rent as the Tenants said they would pay the rent. When the rent was not paid the Landlord's agent issued a 10 Day Notice for unpaid rent in the amount of \$3,600.00 on November 3, 2015. The Landlord's agent said there was \$150.00 of unpaid rent for August, 2015 and \$1,150.00 for each month of September, October and November, 2015. The Landlord's agent said the total unpaid rent is \$3,600.00. The Landlord's agent also requested that the Landlord recover the filing fee from the Tenants in the amount of \$50.00.

The Tenant said they paid the July, August and September, 2015 rent and that the Tenant's husband had done work for the Landlord that the Landlord has not paid for. The Tenant said her husband does not work for free and the Landlord owes them money for his work. The Tenant continued to say that they did not pay the October, 2015 rent and they thought the November, 2015 rent was free due to the 2 Month Notice to End Tenancy for the Landlord's Use. The Tenant said the Landlord has put the house up for sale so the daughter is not moving in therefore the 2 Month Notice to End Tenancy for the Landlord's use of the property was not correct.

As well the Tenant said they had paid the July, August and September, 2015 rent. The Landlord called a witness T.B. who was a witness to the August, 2015 rent payment. The Tenant said they paid the full August, 2015 rent. The Landlord said the Tenant was short \$150.00 and the Tenant said they would pay it when the female Tenant was paid at work. The Witness said the Tenants paid \$1,000.00 of the August, 2015 rent and told the Landlord they would pay the rest when the female Tenant was paid at work. The Witness confirmed the Landlord's testimony about the August, 2015 rent payment.

Analysis

There were two Notices to End Tenancy given to the Tenants. A two Month Notice to End Tenancy for Landlord's Use of the Property dated September, 20, 2015 and a 10 Day Notice to End Tenancy for Unpaid Rent dated November 3, 2015. As the Tenants did not maintain the rental agreement by paying the rent; I cancel the 2 Month Notice to End Tenancy for the Landlord's use of the property and I accept the 10 Day Notice to End Tenancy for unpaid rent.

Section 26 (1) of the Act says a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent

I find that the Tenants have not paid the overdue rent and the Tenants do not have the right to withhold a part or all of the unpaid rent. Consequently, I accept the Landlords' testimony and evidence that there is unpaid rent in the amount of \$150.00 for August, 2015 and \$1,150.00 of unpaid rent for each month of September, October and November, 2015. I find for the Landlord and award the Landlord a monetary claim for unpaid rent of \$3,600.00. As well since the Landlords have been successful in this matter I also order the Landlords to recover the filing fee of \$50.00 for this proceeding from the Tenants. A Monetary Order in the amount of \$3,650.00 is awarded to the Landlord.

Further as there is still occupants in the rental unit, some of the Tenants' belongings and that the Landlords have requested an Order of Possession; I grant the Landlords an Order of Possession with an effective vacancy date of two days after service of the Order on the Tenants and occupants. The Order of Possession is granted due to unpaid rent.

Further the parties agree the Tenants can have access to the rental unit on January 12, 2015 at 6:00 p.m. to remove their remaining belongings.

Conclusion

An Order of Possession effective 2 days after service of the Order and a Monetary Order in the amount of \$3,650.00 have been issued to the Landlords. A copy of the Orders must be served on the Tenants: the Order of Possession may be enforced in the Supreme Court of British Columbia and the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

The Tenants' application is cancelled without leave to reapply and the Tenants are ordered to bear the filing cost of \$50.00 for their application which they have already paid.

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: January 11, 2016

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Residential Tenancy Branch

