



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Rideout Holdings  
and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes:**

**OPR, MNR, MNSD, MNDC, FF**

### **Introduction**

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested an Order of possession for unpaid rent, a monetary Order for unpaid rent and damage or loss under the Act, to retain the security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing.

### **Preliminary Matters**

At the start of the hearing the tenant confirmed she had received the 10 day Notice to end tenancy on November 10, 2015. The tenant said that on November 16, 2015 she applied to dispute the Notice at a Service BC office. The tenant said she was waiting for a call from Service BC informing her that she could pick up her hearing documents. She was not contacted and the tenant did not follow-up or make any further enquiry regarding her application made two months ago.

The tenant did not supply copies of evidence she said were given to Service BC as part of her application to dispute the Notice ending tenancy.

During the hearing a search of the tenant's name for an application in the Residential Tenancy Branch (RTB) data base did not reveal an application made by the tenant naming this landlord.

The application includes a claim in the sum of \$550.00 for the unpaid pet deposit. Unpaid deposits form grounds for ending a tenancy for cause; they cannot be claimed as compensation.

The application was amended to correct the spelling of the tenant's surname.

### Issue(s) to be Decided

Is the landlord entitled to an Order of possession for unpaid rent?

Is the landlord entitled to a monetary Order for unpaid rent and loss of rent revenue?

May the landlord retain the security deposit paid by the tenant?

### Background and Evidence

This one year fixed-term tenancy commenced on November 1, 2015. Rent is \$1,100.00 per month. There was some dispute regarding the due date of rent. A copy of the tenancy agreement supplied as evidence did not include a rent due date. The tenant said that several days after signing the tenancy agreement one of the landlord's made a notation on her copy of the tenancy agreement allowing one half of rent to be paid on the first and fifteenth days of each month.

The landlord, K.P. testified and said she did not recall making any notation on the tenant's tenancy agreement regarding the rent due date.

The landlord conceded that the tenancy agreement was silent on a rent due date and accepted that rent each month should be paid no later than the fifteenth day; although the tenant knew rent was due on the first day.

The landlord has received a security deposit in the sum of \$550.00.

The tenant has not paid any rent since living in the unit; the landlord is claiming unpaid rent and per diem rent totaling \$3,300.00.

The tenant said that one half of her rent was to be paid directly to the landlord by a government agency. The tenant would pay the other half of the rent by the fifteenth day of the month. The tenant stated that the landlord was to go to a government office to pick up the initial disability cheque and he failed to do so.

The tenant said that on November 5, 2015 the landlord send the tenant an email telling her to move out. The tenant said that the landlord was at her rental unit on November 6, 2015 and he refused to accept a cash payment toward rent and told her to move out. The tenant stated that on November 12, 2015 the landlord was at her unit and she tried to pay the rent and the landlord refused to accept the payment. The tenant has now placed her rent money in what she referred to as a trust account with her parents.

The landlord responded that he would never, ever refuse a rent payment by a tenant. The landlord denied he was told he had to pick up a cheque from a government agency. The landlord would not have liked to do so, but he would have gone to pick up a cheque if it meant receiving a payment toward rent. The landlord said he would never refuse rent money.

The landlord stated that on November 10, 2015 a 10 day Notice ending tenancy for unpaid rent or utilities, which had an effective date of November 19, 2015, was served by posting to the tenant's door. The tenant has confirmed receipt of the Notice on November 10, 2015.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$1,100.00 within five days after the tenant was assumed to have received the Notice. The Notice also indicated that the tenant was presumed to have accepted that the tenancy was ending and that the tenant must move out of the rental by the date set out in the Notice unless the tenant filed an Application for Dispute Resolution within five days.

The tenant confirmed that toward the end of November 2015 the landlord was in the unit for some repair work and she did not offer to pay any rent at that time. When I asked the tenant why she would not drop a cheque off at the landlord's office or have someone take a cheque in on her behalf the tenant said she did not want to have anything to do with the landlord.

Toward the end of the hearing the tenant said she would pay her rent the next day. The tenant then changed her mind and said she will not pay the rent owed.

At the end of the hearing the tenant provided a general delivery mailing address that can be used for service.

### Analysis

I have not relied on the deemed service provision of the Act as the tenant has given irrefutable testimony that she received the Notice on November 10, 2015. Therefore, I find that the tenant received the 10 day Notice to end tenancy on November 10, 2015.

Section 46(1) of the Act stipulates that a 10 day Notice ending tenancy is effective 10 days after the date that the tenant receives the Notice. As the tenant received this Notice on November 10, 2015, I find that the earliest effective date of the Notice is November 20, 2015.

Section 53 of the Act stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of this Notice to End Tenancy is November 20, 2015.

In the absence of evidence to the contrary, I find that the tenant was served with a Notice ending tenancy that required the tenant to vacate the rental unit on November 20, 2015, pursuant to section 46 of the Act.

Section 46 of the Act stipulates that a tenant has five days from the date of receiving the Notice ending tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice.

I have rejected the tenant's submission that there was a meeting of the minds that rent was due by way of two payments made each month. The landlord does not have a copy of the tenancy agreement indicating this change was made and the tenant did not submit a copy of an altered agreement for examination during the hearing.

I find on the balance of probabilities that the tenant understood she must pay the rent in full within five days of November 10, 2015, the date she received the Notice ending tenancy. The payment due date would also align with the date the tenant says rent was fully due.

The tenant failed to diligently pursue an application to dispute the Notice and did not supply any documents in support of her testimony regarding the rent due date. This causes me to question the veracity of the tenant's submissions and to rely more heavily on the landlord's submissions regarding the agreed rent due date as being the first day of each month. The due date for rent is set out in the Notice ending tenancy, a document that was before me and that had been received by the tenant. Therefore, I find, in the absence of any evidence to the contrary that the rent was due on the first day of each month.

The tenant said she attempted to pay the rent on November 16, 2015; on the sixth day after receiving the Notice, one day after she said all rent is due each month and outside of the five day time limit required by the Notice. I find this testimony lacks the ring of truth as it was within the tenant's means to ensure payment was made to the landlord.

I found the landlord's testimony consistent and logical and, on the balance of probabilities, that it is highly unlikely the landlord would refuse to accept money from the tenant. The Notice ending tenancy gave the tenant a warning that rent was due and the tenant failed to pay rent or diligently pursue an application to dispute the Notice by November 15, 2015.

Therefore, as the tenant has not disputed the Notice and rent has not been paid by November 15, 2015 I find, pursuant to section 46(5) of the Act that the tenant accepted the tenancy has ended on the effective date of the Notice; November 20, 2015.

In the absence of evidence to the contrary, I find that the tenant has not paid rent from November 1, 2015 to November 20, 2015 and per diem rent from November 21, 2015 to January 31, 2016 in the sum of \$3,300.00. I have provided the landlord with per diem

rent to the end of January as it is unlikely the rental unit will be recovered before that time.

As the landlord's application has merit, I find pursuant to section 72 of the Act that the landlord is entitled to recover the \$50.00 filing fee from the tenant for the cost of this Application for Dispute Resolution.

Pursuant to section 72 of the Act, I find that the landlord is entitled to retain the \$550.00 security deposit in partial satisfaction of the claim.

The landlord has been granted an Order of possession that is effective 2 days after service to the tenant. This Order may be served on the tenant, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

Based on these determinations I grant the landlord a monetary Order for the balance of \$2,800.00. In the event that the tenant does not comply with this Order, it may be served on the tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

### Conclusion

The landlord is entitled to an Order of possession and monetary Order for unpaid rent and loss of rent revenue.

The landlord may retain the security deposit.

The landlord is entitled to filing fee costs.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 19, 2016

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Residential Tenancy Branch

