



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF, CNR

### Introduction

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 \$3236.84 for unpaid rent and utilities
- c. An order to recover the cost of the filing fee

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

- a. An order to cancel the 10 day Notice to End Tenancy dated November 16, 2015.
- b. An order that the landlord comply with the Act, regulation and/or the tenancy agreement

A hearing was conducted by conference call in the presence 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.

### Preliminary Issue:

The tenant made a request for an adjournment on the basis he needed further time to consult a solicitor. The landlord opposed the adjournment testifying that the landlord would face significant prejudice if the application was delayed as the tenant has not paid any rent since he moved in. After considering the submissions and evidence of the parties I determined this was not an appropriate case to grant an adjournment for the following reasons.

- a. The tenant was served with a copy of the Application for Dispute Resolution on January 4, 2016 and he had sufficient time to consult a solicitor.
- b. I determined the granting of a adjournment would amount to an unreasonable delay. The tenant filed an Application for Dispute Resolution on November 27, 2015 and has yet to serve the landlord.
- c. The tenant disputed the tenancy agreement and testified this relates to matters involving a promissory note. However, the tenant failed to produce any documents to support his allegation.

- d. I determined any further delay would put the landlord at significant risk of further loss of rent.

Both parties were given a full opportunity to present evidence and make submissions. 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 personally served on the Tenant on November 18, 2015. The tenant testified he did not serve the landlord with the Tenant's Application for Dispute Resolution. I determined that the Landlord's Application for Dispute Resolution/Notice of Hearing was served on the Tenant was served on the Tenant on January 4, 2016.

#### 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 November 16, 2015?
- b. Whether the tenant is entitled to an order that the landlord comply with the Act, regulation and/or the tenancy agreement?
- c. Whether the landlord is entitled to an Order for Possession?
- d. Whether the landlord is entitled to A Monetary Order and if so how much?
- e. Whether the landlord is entitled to recover the cost of the filing fee?

#### Background and Evidence

On September 29, 2015 the parties entered into a written tenancy agreement that provided that the tenancy would start on October 1, 2015 and end on May 1, 2016 and become month to month after that. The tenancy agreement provided that the rent is \$809.21 per month payable in advance on the first day of each month. The tenant did not pay a security deposit although it states he was to pay a security deposit of \$809.21 by November 1, 2015.

The tenant has not paid the rent since he was moved in.

The tenant disputes this. He testified that the sum identified as the rent payment was in fact a payment he was supposed to make to the landlord under a promissory note. However, the tenant failed to produce any documents to support this allegation. The

landlord testified the promissory note relates to matters other than the tenancy agreement.

Tenant's Application:

Section 59(3) provides that a person who makes an application for dispute resolution must give a copy to the other party within 3 days of making it. While there are provisions for an arbitrator to extend the time, the arbitrator is entitled to extend the time only in exceptional circumstances. Exceptional circumstances do not exist in a situation such as this where the tenant has not served the landlord and the hearing has been concluded. The explanation of the tenant that he did not know the landlord address in this case is insufficient given the history of the relationship of the parties and the tenant received a copy of the landlord's application on January 4, 2016.

**As a result I ordered that the tenant's application to cancel the Notice to End Tenancy be dismissed without liberty to re-apply.**

Order for Possession:

The Residential Tenancy Act provides that where an arbitrator has dismissed a tenant's application to cancel a Notice to End Tenancy, the arbitrator must grant an Order for Possession. As a result I granted the landlord an Order for Possession on 2 days notice.

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.

Landlord's Application:

The applicant has the burden to establish his claim on a balance of probabilities. After hearing the disputed evidence of the parties I determined the explanation of the landlord is more credible than that of the tenant for the following reasons:

- a. The landlord relied on a written tenancy agreement which was signed by the parties on September 29, 2015. The tenant does not dispute that he signed this document. The tenancy agreement does not refer to other business dealings or a promissory note.
- b. The tenant alleged that the payment set out in the tenancy agreement was a payment that was to be made under a promissory note. However, the tenant failed to produce any documents to support this allegation.

- c. The landlord's explanation that the rental payment set out in the written tenancy agreement relates to the rental of the rental unit and is unrelated to payments that were to be made under a promissory note is more credible. The tenant's explanation would require the arbitrator to accept the submission the tenant could live in the rental unit without having the obligation to pay rent. This is contrary to the specific provisions of the tenancy agreement and the standard term than that any changes to the standard term must be in writing and initialed by both parties.

As a result I determined the residential tenancy agreement dated September 29, 2015 governs the tenancy relationship between the parties.

I further determined the tenant has failed to pay the rent for the months of October 2015, November 2015, December 2015 and January 2016 and the sum of \$3236.84 remains outstanding.

Analysis - Order of Possession:

I determined the landlord was entitled to an Order for Possession. There is outstanding rent. The Tenant's application to cancel the 10 day Notice to End Tenancy has been dismissed. Accordingly, I granted the landlord an Order for Possession on 2 days notice.

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.

Analysis - Monetary Order and Cost of Filing fee:

I determined the tenant has failed to pay the rent for the month(s) of October 2015, November 2015, December 2015 and January 2016 and the sum of \$3236.84 remains outstanding. I granted the landlord a monetary order in the sum of \$3236.84 plus the sum of \$50 in respect of the filing fee for a total of \$3286.84.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

Conclusion:

I dismissed the tenant's application without liberty to re-apply. I granted an Order for Possession on 2 days notice. I ordered that the tenant pay to the landlord the sum of \$3286.84.

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 21, 2016

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Residential Tenancy Branch

