



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, CNR, FF

### 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 \$4290 for unpaid rent and damages
- c. An order to retain the security deposit
- d. An order to recover the cost of the \$50 filing fee

The Application for Dispute Resolution filed by the Tenant claims an order to cancel the 10 day Notice to End Tenancy dated December 2, 2015.

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.

I find that the 10 day Notice to End Tenancy was served on the Tenants by posting on December 2, 2015. I find that the Application for Dispute Resolution/Notice of Hearing filed by the tenant was personally served on an agent for the landlord on December 7, 2015. I find the application for Dispute Resolution/Notice of Hearing filed by the landlord was served on the tenants by mailing, by registered mail to where the tenants reside on December 16, 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 December 2, 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 recover the cost of the filing fee?

### Background and Evidence

The parties entered into a written tenancy agreement that provided that the tenancy would start on August 1, 2010 with a rent set at \$1335 per month payable in advance on the first day of each month.. The tenants paid security deposit of \$450 at the start of the tenancy. The present rent is \$1430 per month payable in advance on the first day of each month as the rent has been increased in accordance with Notices of Rent Increases..

The tenants failed to pay the rent for the months of December 2015 and January 2016 and the sum of \$2860 remains owing. The tenants continue to live in the rental unit.

### Tenants' Application:

The tenant's application states that they are unable to pay the market rent of \$1430 per month and they have made a request to the landlord to reinstate and increase a rent subsidy. The tenant testified that he is now unemployed and his wife is seriously ill. The landlord refused his request on the basis that the tenants failed to provide the required information.

Section 2 of the Residential Tenancy Act Regulations provides as follows:

### **Exemptions from the Act**

**2** Rental units operated by the following are exempt from the requirements of sections 34 (2), 41, 42 and 43 of the Act *[assignment and subletting, rent increases]* if the rent of the units is related to the tenant's income:

- (a) the British Columbia Housing Management Commission;
- (b) the Canada Mortgage and Housing Corporation;
- (c) the City of Vancouver;
- (d) the City of Vancouver Public Housing Corporation;
- (e) Metro Vancouver Housing Corporation;
- (f) the Capital Region Housing Corporation;
- (g) any housing society or non-profit municipal housing corporation that has an agreement regarding the operation of residential property with the following:

- (i) the government of British Columbia;
  - (ii) the British Columbia Housing Management Commission;
  - (iii) the Canada Mortgage and Housing Corporation.
- [am. B.C. Reg. 249/2008.]

The tenancy agreement dated June 19, 2010 provided that the rent was \$1335. The rent has been increased to \$1430 through the use of the approved form of Notice of Rent Increase. The Addendum dealing with a rent subsidy related to the tenant's income provides that the Residential Tenancy Act does not apply to determine whether a tenant is entitled to a rent subsidy and if so, whether it has been properly calculated.

I dismissed the tenant's application to cancel the 10 day Notice to End Tenancy. The form used by the landlord is on an approved form. The amount stated that is outstanding is consistent with the tenancy agreement and Notices of Rent Increase. An arbitrator does not have the jurisdiction to determine whether the tenant is entitled to a rent subsidy and/or whether it has been properly calculated.

Landlord's Application - Analysis - Order of Possession:

I determined the landlord was entitled to an Order for Possession. There is outstanding rent. The Tenants' application to cancel the Notice to End Tenancy has been dismissed. 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. Accordingly, I granted the landlord an Order for Possession effective February 29, 2016.

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 December 2015, January 2016 and February 2016 and the sum of \$4290 remains outstanding. I determined the landlord has given sufficient notice of their intention to claim for all of last month as provided in the Application for Dispute Resolution. I granted the landlord a monetary order in the sum of \$4290 plus the sum of \$50 in respect of the filing fee for a total of \$4340.

Security Deposit:

I determined the security deposit plus interest totals the sum of \$450. I ordered the landlord may retain this sum thus reducing the amount outstanding under this monetary order to the sum of \$3890.

Conclusion:

In summary I dismissed the tenant's application to cancel the 10 day Notice to End Tenancy. I granted an Order for Possession effective February 29, 2016. I ordered that the landlord shall retain the security deposit of \$450. I further ordered that the tenants pay to the landlord the sum of \$3890.

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.

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 28, 2016

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Residential Tenancy Branch

