



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 0964038 BC LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      cnr, dri, opr, mnr, ff

### Introduction

The tenant applies for an order to cancel a 10 day Notice to End Tenancy dated November 30, 2015, and also disputes a rent increase, which the tenant alleges exceeded increases permitted by regulation. The landlord applies for an Order of Possession, a Monetary Order for unpaid rent, and to recover the filing fee of his application.

Both parties attended the hearing, and both confirmed receipt of the other's claims and evidence.

### Issues to Be Decided

- Is the Notice to End Tenancy of November 30, 2015 effective to end this tenancy and entitle the landlord to an Order of Possession, or should the Notice be cancelled, and the tenancy continue?
- Has the tenant been given an illegal rent increase, resulting in any overpayment of rent?
- Is there rent money due and payable by the tenant to the landlord, entitling the landlord to a Monetary Order?
- Is the landlord entitled to recover his filing fee from the tenant?

### Background and Evidence

This tenancy began November 27, 2009. The tenant had formerly owned the premises, but lost them as a result of a foreclosure. The landlord purchased the home, and its contents, and agreed to rent the premises to the tenant at month rent of \$7,000.00, due on the 1<sup>st</sup> day of each month. The tenant fell into arrears, and in or about 2010 the landlord agreed to accept monthly payments of \$3,750.00. Payments became even more sporadic, and were not made on time. On November 30, 2015 the landlord served

the tenant with a 10 day Notice to End Tenancy, which alleged arrears of \$21,000.00. No further rental payments have been made.

The tenant alleges that rent was reduced to \$3,750.00, but now the landlord demands rent of \$7,500.00 per month. He argues this is an illegal rent increase. The landlord submits the rent has at all times remained \$7,000.00 per month. He permitted the tenant to pay less for a period, and the tenant's payments of \$7,500.00 were higher simply because the tenant was so far in arrears. The landlord testified that 6 payments were made in 2015, with the last payment occurring August 12. These payments totaled \$45,000.00.

### Analysis

There is no dispute that the original tenancy agreement specified monthly rent of \$7,000.00, due on the first day of every month. I find the landlord's testimony and explanation as to the various levels of rental payments made over the course of the tenancy to be credible and honestly given. I accept that:

- although the rent was never formally or legally reduced, the landlord waived the need for the tenant to pay the full rent for a period, and accepted the reduced sum of \$3,750.00 without enforcing his right to the full rental payments;
- this reduction was strictly a gesture of compassion and generosity, and was never a binding reduction of the full rent owing;
- at all times the full rent remained \$7,000.00;
- the tenant paid 6 rental payments in 2015 totalling \$45,000.00, with the last payment being made August 12. During that period, however, monthly rent of \$7,000.00 would have totalled \$56,000.00.
- no rent was paid in September, October or November, and for these three months the full that should have been paid totalled \$21,000.00.

Following the receipt of the 10 Day Notice to End Tenancy on November 30, 2015, the tenant paid no further rent, yet remains in possession of the premises. A further loss of rental income of \$14,000.00 has therefore been incurred by the landlord.

Based upon the above, the 10 day Notice of November 30, 2015 is found to be effective to end this tenancy, and the landlord has established a right to possession on the basis of that notice and pursuant to section 47(5)(b) of the Residential Tenancy Act.

Although his actual loss is greater, the landlord limits his claim for loss of rent up to the date of this hearing to \$21,000.00. I find that the tenant is liable for this lost rental income, and order same to be paid to the landlord. The landlord may also recover his \$50.00 filing fee from the tenant. This results in a total sum of \$21,050.00 payable by the tenant to the landlord.

Conclusion

Pursuant to Section 55 of the Residential Tenancy Act, I issue an Order of Possession, effective 48 hours following service of this order upon the tenant. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court for enforcement.

I further order the tenant pay to the landlord the sum owing of \$21,050.00.

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

