



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

OPR, OPC, MNR, MNSD, MNDC, FF

### Introduction

This hearing was convened in response to cross applications.

The Landlord filed an Application for Dispute Resolution, in which the Landlord applied for an Order of Possession for Unpaid Rent or Utilities, an Order of Possession for Cause, a monetary Order for unpaid rent or utilities, a monetary Order for money owed or compensation for damage or loss, to retain all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution. At the hearing the Landlord acknowledged that a One Month Notice to End Tenancy has not been served to the Tenant and I therefore will not consider the application for an Order of Possession for Cause.

The Landlord stated that on February 17, 2016 the Application for Dispute Resolution, the Notice of Hearing and documents the Landlord submitted with the Application for Dispute Resolution were personally served to the Tenant. The Tenant acknowledged receiving these documents and they were accepted as evidence for these proceedings.

The Tenant filed an Application for Dispute Resolution, in which the Tenant applied to cancel a Notice to End Tenancy for Unpaid Rent or Utilities, for an Order requiring the Landlord to make repairs to the rental unit, for an Order requiring the Landlord to return the Tenant's personal property, and for an Order suspending or setting conditions on the Landlord's right to enter the rental unit.

The Tenant stated that on February 13, 2016 the Application for Dispute Resolution, the Notice of Hearing and documents the Tenant submitted with the Application for Dispute Resolution were personally served to the Landlord. The Landlord acknowledged receiving these documents and they were accepted as evidence for these proceedings.

Both parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

### Preliminary Matter

In documents that Landlord has submitted with the Application for Dispute Resolution the Landlord refers to damage to the residential complex allegedly caused by the male who was living in the unit with the Tenant. As the Landlord has not applied for a monetary Order for damage to the rental unit and the Landlord has not specified how much compensation he is seeking for damage caused to the residential complex, I will not be considering damage to the complex at these proceedings.

The Landlord retains the right to file another Application for Dispute Resolution seeking compensation for damages to the residential complex if the Tenant fails to repair damage caused by the Tenant or her guest during the tenancy.

### Issue(s) to be Decided

Should the Ten Day Notice for Unpaid Rent or Utilities be set aside or should the Landlord be granted an Order of Possession?

Is the Landlord entitled to a monetary Order for unpaid rent or utilities and/or to keep all or part of the security deposit?

Is there a need to issue an Order requiring the Landlord to make repairs to the rental unit?

Is there a need to issue an Order requiring the Landlord to return the Tenant's personal property?

Is there a need to issue an Order suspending or setting conditions on the Landlord's right to enter the rental unit?

### Background and Evidence

The Landlord and the Tenant agree that:

- the Tenant first moved into the residential complex on October 01, 2015;
- the Tenant moved into a larger room in the residential complex on December 01, 2015;
- the written tenancy agreement declares that rent will be \$600.00, due by the first day of each month;
- they had a verbal agreement that the Tenant would only have to pay \$500.00 per month if she was the only person occupying the room;
- on January 01, 2016 she was sharing the room with a third party;
- rent of \$600.00 was paid for January of 2016;
- the third party moved out of the room in January of 2016 so the Tenant only had to pay \$500.00 for February of 2016;
- the Tenant did not pay rent when it was due on February 01, 2016;
- on February 19, 2016 the Tenant paid \$250.00 in rent for February of 2016;
- on February 19, 2016 the Tenant was given a receipt that says the payment was "to end of March 30, 2016";
- a security deposit of \$350.00 was paid; and
- the Tenant is still living in the rental unit.

The Landlord stated that on February 12, 2016 he personally served the Tenant with a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, which had an effective date of February 12,

2016. In his Application for Dispute Resolution the Landlord declared that the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities was posted on the Tenant's door on February 02, 2016. The Tenant stated that she located the Notice to End Tenancy on her door on, or about, February 02, 2016.

The Tenant stated that the owner of the rental unit was present when she paid \$250.00 in rent for February of 2016 and that he agreed that the rent payment of \$250.00 was payment of her rent, in full, for the period ending on March 31, 2016, providing she vacated the rental unit by the end of March. She stated that she will not be vacating the rental unit by the end of March, although she hopes to have her property fully moved by the end of the first week of April of 2016.

The Landlord stated that when the Tenant paid \$250.00 in rent for February of 2016, she agreed she would vacate the unit by the end of March but there was no agreement she did not have to pay rent, in full, for February and March of 2016. He contends that the Tenant still owes \$750.00 in rent for February and March of 2016.

The Landlord and the Tenant agree that the Tenant was given a rent receipt for the payment made on February 12, 2016, although neither party submitted a copy of the receipt as evidence. The parties agree that at the bottom of the receipt the Landlord has written "to the end of March 30, 2016". The Tenant stated that this entry refers to the agreement that rent was paid in full for the period between February 01, 2016 and March 31, 2016. The Landlord was unable to explain what the entry means.

The Landlord is also seeking compensation, in the amount of \$750.00, for unpaid utilities.

The Landlord and the Tenant agree that the Tenant was required to pay a portion of the hydro bill and that the amount of Tenant's share is determined by dividing the bill by the number of people living in the residential complex.

The Landlord submitted a hydro bill for the period between October 28, 2015 and December 24, 2015, in the amount of \$762.43. The Landlord stated that there were 6 people living in the residential complex during this billing period and that the bill must, therefore, be divided by 6 to determine the Tenant's share. The Tenant stated that there were 10 people living in the residential complex during this billing period and that the bill must, therefore, be divided by 10 to determine the Tenant's share.

The Landlord and the Tenant agree that when the male who was living with the Tenant in December of 2015 paid his portion of the rent for January of 2015 he paid an additional \$75.00, and that the additional \$75.00 was to be applied to the hydro bill of \$762.43.

The Tenant stated that she believes she overpaid her rent for January of 2016, which should be applied to any amount currently owed to the Landlord. She based this submission on the fact that \$600.00 in rent was paid for January of 2016; her boyfriend stopped living in the rental unit on January 08, 2016; since her boyfriend did not occupy the rental unit for the entire month of January she was only required to pay the reduced rent of \$500.00.

In support of her application for an Order requiring the Landlord to make repairs to the rental unit, the Tenant stated that she wants the Landlord to repair the roof that is allegedly leaking. The Tenant was advised that I have determined that this tenancy will end due to unpaid rent;

that the tenancy will end two days after an Order of Possession is served upon her; that the roof could not be repaired in time for her to benefit from that repair; and that I will not, therefore, be issuing an Order requiring the Landlord to repair the roof.

In support of her application for an Order requiring the Landlord to return personal property belonging to the Tenant, the Tenant stated that the Landlord has disposed of personal property the Tenant left in a common area of the residential complex. As it would be impossible for me to order the Landlord to return property he has discarded, the Tenant was advised that I will not be issuing an Order requiring the Landlord to return property belonging to the Tenant which has allegedly been discarded.

In support of her application to suspend or set conditions on the Landlord's right to enter the rental unit the Tenant stated that the Landlord has, on occasion, entered the rental unit without proper notice. At the hearing the Landlord stated that he will not enter the rental unit without, except in the case of an emergency, for the remainder of the tenancy.

### Analysis

Section 46(1) of the *Residential Tenancy Act (Act)* entitles landlords to end a tenancy within ten days, by providing proper written notice if rent is not paid when it is due. On the basis of the undisputed evidence I find that the Tenant did not pay the rent of \$500.00 when it was due on February 01, 2016 and that the Landlord therefore had the right to serve the Tenant with a Ten Day Notice to End Tenancy.

On the basis of the testimony of the Tenant and the written declaration of the Landlord, I find that the Ten Day Notice to End Tenancy, dated February 02, 2016, was posted on the Tenant's door on February 02, 2016. Given that the Landlord's written declaration that the Notice was posted on February 02, 2016 is consistent with the Tenant's testimony that she found it on February 02, 2016, I find that the Landlord was likely mistaken when he testified the Notice was posted on February 12, 2016.

Section 46(4)(a) of the *Act* stipulates that if a tenant pays the overdue rent within five days of receiving a Ten Day Notice to End Tenancy the Notice has no effect. As there is no evidence that the Tenant paid all of the rent for February within five days of receiving the Ten Day Notice to End Tenancy, I uphold the Ten Day Notice to End Tenancy, I dismiss the Tenant's application to cancel the Notice to End Tenancy, and I grant the Landlord an Order of Possession.

Even if I accepted the Tenant's testimony that the owner of the residential property agreed that she only had to pay rent of \$250.00 for February and March of 2016 in exchange for vacating the rental unit by the end of March of 2016, I would find that the agreement was void. As the Tenant has indicated she does not intend to vacate the rental unit by March 31, 2016, I find that the Landlord is not obligated to comply with any alleged agreement to reduce the rent, as the reduced rent was contingent on the Tenant vacating by March 31, 2016. I therefore find that the Tenant remains obligated to pay rent of \$500.00 for March of 2016 and \$500.00 for February of 2016.

On the basis of the undisputed evidence, I find that the Tenant has only paid \$250.00 in rent for February of 2016. I therefore find that she still owes \$750.00 in rent for February and March of 2016.

On the basis of the undisputed evidence I find that the Tenant was required to pay a portion of the hydro bill and that the amount of Tenant's share is determined by dividing the bill by the number of people living in the residential complex.

There is a general legal principal that places the burden of proving a fact on the person who is seeking compensation. In these circumstances the Landlord bears the burden of proving the number of people living in the rental unit between October 28, 2015 and December 24, 2015 for the purposes of determining the amount the Tenant must pay for hydro. I find that the Landlord has submitted insufficient evidence to establish there were only 6 people living in the rental unit between October 28, 2015 and December 24, 2015. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Landlord's testimony that there were six people living in the complex during that period or that refutes the Tenant's testimony that there were ten people living in the complex during that time.

On the basis of the Tenant's testimony I find that there were no more than ten people living in the rental unit between October 28, 2015 and December 24, 2015. I therefore find that the Tenant is obligated to pay 1/10 of the hydro bill for \$762.43, which is \$76.24.

On the basis of the undisputed evidence that the male who was living with the Tenant in December of 2015 has paid \$75.00 for the Tenant's share of the hydro bill of \$762.43, I find that the Tenant owes an additional \$1.24 for her portion of this bill.

On the basis of the undisputed evidence that the Tenant's boyfriend was living with her on January 01, 2016 and that she was required to pay rent of \$600.00 if a second party occupied the rental unit, I find that the Tenant was obligated to pay rent of \$600.00 on January 01, 2016. As there is nothing in the rental agreement that specifies the Tenant is entitled to a rent reduction if the third party vacates the rental unit after the first day in the month, I cannot conclude that the Tenant overpaid her rent for January of 2016.

The Landlord is reminded of his obligation to comply fully with section 29 of the Act, which stipulates that a landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
  - (i) the purpose for entering, which must be reasonable;
  - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
- (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
- (d) the landlord has an order of the director authorizing the entry;
- (e) the tenant has abandoned the rental unit;
- (f) an emergency exists and the entry is necessary to protect life or property.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the cost of filing this Application for Dispute Resolution.

Conclusion

I grant the Landlord an Order of Possession that is effective two days after it is served upon 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.

The Landlord has established a monetary claim, in the amount of \$801.24, which is comprised of \$750.00 in unpaid rent, \$1.24 in unpaid utilities, and \$100.00 in compensation for the filing fee paid by the Landlord to file his Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to keep the Tenant's security deposit of \$350.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$451.24. In the event 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.

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: March 30, 2016

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Residential Tenancy Branch