



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **CORRECTED DECISION**

### Dispute Codes:

**OPR, MNR, CNC, CNR, FF**

### Introduction

This was a cross-application hearing.

The tenants applied to cancel two one month Notices to end tenancy for cause issued on February 17, 2016; and two 10 day Notices to end tenancy for unpaid rent issued on to end tenancy issued on February 15 and 22, 2016.

The landlord applied requesting an Order of possession based on a 10 day Notice to end tenancy issued on February 22, 2016 and compensation for unpaid rent for February 2016.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained 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. I have considered all of the evidence and testimony provided.

### Preliminary Matters

The tenant present at the hearing, K.M., confirmed she was served with Notice of the hearing in early March 2016.

The tenancy addendum supplied as evidence was signed by the male respondent on the landlord application, D.M. The male did not sign the tenancy agreement. The tenant said that D.M. does not live in the rental unit and is not a tenant.

The landlord stated that D.M. was moving items at the time the tenancy agreement was signed. The tenant wrote D.M.'s name on the first page of the tenancy agreement, but D.M. did not sign the agreement; only the addendum. The landlord said that the male lives in the rental unit but the tenant did not want this disclosed to a government ministry. The male is at the rental unit and the female tenant has acknowledged the male lives in the unit.

D.M. was served with Notice of this hearing, sent to the rental unit via registered mail on March 4, 2016. The landlord provided the Canada Post tracking number and receipt as evidence of service.

From the evidence before me I find, on the balance of probabilities, that the male respondent is a tenant. He signed the addendum and the tenant wrote his name on the first page of the tenancy agreement; confirming he is a tenant.

Therefore, I find that the male respondent is deemed served, pursuant to section 90 of the Act, with Notice of this hearing, effective the fifth day after mailing.

This hearing was scheduled after the landlord submitted an application regarding unpaid February 2016 rent, via the Direct Request Proceeding process; an ex parte hearing. The tenants disputed the Notice ending tenancy issued on February 22, 2016 for unpaid February rent. Therefore; the Direct Request Proceeding application was scheduled to be considered at this participatory hearing.

The landlord said that April 2016 rent has not been paid, that another 10 day Notice ending tenancy has been issued and that another Direct Request Proceeding application was made; based on a Notice to end tenancy issued in April 2016.

**Included in the evidence the tenant confirms she received on April 2, 2016 was a copy of an application for dispute resolution dated March 1, 2016, that requested compensation for unpaid April and May 2016 rent. This application was not processed as an amendment and was served as evidence.**

**On April 1, 2016 the landlord completed an amendment to the application which was served to the tenant with all other evidence on April 2, 2015. The male tenant was given this evidence via registered mail.**

**Therefore, I am satisfied that the tenant understood the landlord intended to claim compensation for unpaid April 2016 rent in the sum of \$1,400.00 and the application was properly amended to include that claim.**

**The claim for May 2016 rent cannot proceed as May 2016 rent is not yet due.**

The tenant said she had disputed the April 2016 Notice ending tenancy and that she has a hearing date on May 2016.

The parties each supplied file numbers for their applications (see cover page.)

A check was made to see if a decision had been issued in relation to the landlords' most recent Direct Request Proceeding application based on April 2016 rent owed. A decision was located that resulted in an Order of possession to the landlord.

I explained that I would proceed with this hearing as the Direct Request Proceeding decision could potentially be impacted by the tenants' application to cancel the most recent 10 day Notice to end tenancy for unpaid rent and the hearing that has been scheduled.

Tenant K.M. submitted the application as the sole applicant and named only the male landlord. J.W. ,as a respondent.

The landlords J.W. and M.M. applied naming both tenants; K.M. and D.M.

The parties agreed that two separate one month Notices to end tenancy for cause issued were issued on February 17, 2016. There was agreement between the parties that the initial Notice issued on February 17, 2016, that provided a single reason for ending the tenancy, would be withdrawn.

#### 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 February 2016 rent?

Should the 10 day Notice to end tenancy for unpaid rent issued on February 15, 2016 be cancelled?

Should the 10 day Notice to end tenancy for unpaid rent issued on February 22, 2016 be cancelled?

Should the one month Notice to end tenancy issued on February 17, 2016 be cancelled?

#### Background and Evidence

This six month fixed-term tenancy commenced on December 1, 2015 and converts to a month-to-month term on June 2, 2016. Rent is \$1,400.00 per month due on the first day of each month. The landlord is holding a security deposit in the sum of \$700.00. A copy of the tenancy agreement and addendum was supplied as evidence.

The addendum to the tenancy agreement included a term prohibiting pets in the rental unit.

A ten day Notice to end tenancy for unpaid rent due February 1, 2016 was issued on February 15, 2016; the Notice had an effective date of February 25, 2016.

The landlord submitted a copy of an agreement signed by the landlord and tenant K.M. on February 9, 2016. The tenant supplied a copy of this agreement which is signed by landlord J.W.; there is no tenant signature. There was no dispute that the tenant had signed the agreement. In that agreement the tenant acknowledged that she has been delinquent in paying the rent in both January and February 2016 and that she was currently in arrears for February rent owed. The tenant signed agreeing to pay \$750.00 on that date, toward February rent owed. The balance in the sum of \$650.00 was to be paid, including March rent owed, on or before February 20, 2016, for a total payment on February 20, 2016 of \$2,050.00. Tenant K.M. signed acknowledging that if the rent was not paid as agreed, eviction would proceed. The agreement required the tenant to forfeit the security deposit, as liquidated damages.

The parties agreed that the balance of February 2016 rent owed was paid on February 18, 2016. March 2016 rent was not paid until February 29, 2016.

On February 22, 2016 the landlord issued a 10 day Notice to end tenancy for unpaid rent in the sum of \$1,400.00 that was due February 20, 2016. This Notice was issued as the result of the tenants' failure to comply with the written agreement signed by the

parties on February 9, 2016. The Notice was received by the tenant by posting to the door on February 22, 2016. The tenant confirmed receipt but could not recall the date. The landlord was given March 2016 rent on February 29, 2016. The cheque had been mailed by express post on February 27, 2016.

Both 10 day Notices to end tenancy indicated that the Notice would be automatically cancelled if the landlord received the rent owed within five days after the tenants were assumed to have received the Notice. The Notices also indicated that the tenants were presumed to have accepted that the tenancy was ending and that the tenants must move out of the rental by the date set out in the Notice unless the tenants filed an Application for Dispute Resolution within five days.

The one month Notice to end tenancy for cause provided two reasons in support of ending the tenancy:

- Tenant is repeatedly late paying rent; and
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The tenant confirmed receipt of this Notice and disputed the Notice on February 29, 2016.

The landlord stated that the tenants paid rent as follows:

- December 5, 2015, at the point when the tenants moved into the rental unit;
- January 2016 rent paid on January 20, 2016
- February 9, 2016 payment and balance owed paid on February 18, 2016
- March 2016 rent paid on February 29, 2016; and
- April 2016 rent, not yet paid.

The tenant does not dispute that the payment for April 2016 was ~~late~~ **not yet made**. The tenant got behind with her bills. The tenant said she sent the April rent payment to the landlord via registered mail on March 30, 2016 and the mail was returned, marked as return to sender. The landlord said they did not receive a notice of any mail and would never have refused to accept a rent payment. The landlord has repeatedly asked for the April rent payment. The tenant could not provide the details of registered mail sent to the landlord on March 30, 2016 or evidence that the mail was returned, marked by Canada Post.

The parties provided a copy of a letter given to the tenants on February 15, 2016. The letter reminded the tenant that the late rent payments and the presence of a dog in the rental unit was a breach of the terms of the tenancy. The tenants were directed to remove the dog within 24 hours. The tenants were warned that they must correct the failure to pay the rent within five days. The tenants were warned that the landlord would take steps to protect their rights, including eviction.

On February 15, 2016 the male tenant told the landlord the dog would be removed the next day. On February 16, 2016 the dog did not appear to be at the unit; the dog was back in the rental unit on February 17, 2016. The landlord said that when they were at the rental unit two weeks ago the dog could be heard inside the unit, barking. During the hearing the tenant said the dog belonged to her mother; that the dog was visiting and that presence of the dog would not matter now that she was "breached."

### Analysis

I have considered the change to the term of rent payment signed by the parties on February 9, 2016. Section 1 of The Schedule of terms contained in the Residential Tenancy Regulation provides:

- 1 (1) *The terms of this tenancy agreement and any changes or additions to the terms may not contradict or change any right or obligation under the Residential Tenancy Act or a regulation made under that Act, or any standard term. If a term of this tenancy agreement does contradict or change such a right, obligation or standard term, the term of the tenancy agreement is void.*
- (2) *Any change or addition to this tenancy agreement must be agreed to in writing and initialed by both the landlord and the tenant. If a change is not agreed to in writing, is not initialed by both the landlord and the tenant or is unconscionable, it is not enforceable*

From the evidence before me I find that the change in the March 2016 rent payment date did not contradict or change a right or obligation under the Act. The landlord is entitled to rent and the tenant is obligated to pay rent. I find that the parties mutually agreed to alter the terms of the tenancy agreement, changing the March 2016 rent due date to February 20, 2016. This change was made on a separate document, signed and dated by both parties. The change was not made using the original tenancy agreement as the change was temporary.

From the evidence before me I find that the tenants paid \$750.00 toward February 2016 rent owed, on February 9, 2016. The balance of rent owed for February 2016 was \$650.00 and was to be paid, along with March 2016 rent, no later than February 20, 2016. The tenants paid the balance of February 2016 rent on February 18, 2016, but failed to meet the terms of the agreement signed on February 9, 2016. March 2016 rent was not paid by February 20, 2016.

I find that the 10 day Notice to end tenancy for unpaid rent issued on February 15, 2016 was premature and failed to respect the agreement signed on February 9, 2016, altering the terms of rent payment due dates for February and March, 2016. The parties had reached a mutual agreement on rent payments and the tenants had until February 20, 2016 to meet the terms of that agreement. This agreement was reached based on the tenant's acknowledgement that they had failed to pay rent on time. Therefore, I find that the 10 day Notice to end tenancy for unpaid rent issued on February 15, 2016 is of no force and effect.

The 10 day Notice to end tenancy issued on February 22, 2016 required the tenants to pay March 2016 rent that was due on February 20, 2016.

Section 90 of the Act stipulates that a document that is posted on a door is deemed to be received on the third day after it is posted. Therefore, I find that the tenants received the February 22, 2016 Notice to end tenancy on February 25, 2016. The tenants then had until February 27, 2016 to pay March 2016 rent in full.

Section 53 of the Act allows the effective date of a Notice to be changed to the earliest date upon which the Notice complies with the Act; therefore, I find that the Notice effective date is changed to March 6, 2016.

There was no dispute that March 2016 rent was paid on February 29, 2016. The tenants had placed the rent payment in the mail on ~~March~~ **February** 27, 2016 and the landlord confirmed receipt of that payment on March 29, 2016. If the landlord had not confirmed the date the rent payment had been received that payment would have been deemed received, in accordance with section 90 of the Act, effective ~~February~~ **March** 3, 2016.

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. In the circumstances before me I find that the tenants failed to pay March 2016 rent by February 27, 2016; therefore, pursuant to section 46(5) of the Act, I find that the tenants accepted that the tenancy has ended on the effective date of the Notice; March 6, 2016.

I have considered the one month Notice to end tenancy for cause issued on February 17, 2016 and find that the landlord has proven cause to end the tenancy for reasons given on the Notice.

In relation to repeated late payment of rent Residential Tenancy policy suggests that three late payments are the minimum number sufficient to justify a notice under these provisions.

I have reached this conclusion based on the late rent payments made in January, February, March and April 2016. Two payments were made in January 2016; two payments were made in February 2016; March 2016 rent was not paid by March 20, 2016 and April 2016 rent had not yet been paid at the time of the hearing.

I find that the tenants signed an addendum to the tenancy agreement that prohibited pets. The tenant did not dispute that a dog has been in the rental unit and declared that since she is in breach of the agreement the dog will likely not be removed. The tenants were given written notice to remove the dog or face possible eviction and from the evidence before me I find that the tenants failed to comply with that instruction. As a result I find that the tenants have breached a material term of the tenancy agreement.

Section 53 of the Act allows the effective date of a Notice to be changed to the earliest date upon which the Notice complies with the Act; therefore, I find that the one month Notice to end tenancy for cause effective date of March 18, 2016 is changed to March 31, 2016.

Therefore, I find that the one month Notice to end tenancy for cause issued on February 17, 2016 is of force and effect and that the tenancy may also end based on this Notice. The landlord requested an Order of possession based on the Notice for unpaid rent. However, section 55(1) of the Act provides:

**55** (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if*

*(a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and  
(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.*

The landlord has been granted an Order of possession that is effective two days after service to the tenants. This Order may be served on the tenants, filed with the Supreme Court of British Columbia and enforced as an Order of that Court. This Order is issued based on the 10 day Notice to end tenancy issued on February 22, 2016 and the one month Notice to end tenancy for cause issued on February 17, 2016.

As February rent has not been paid I find that the claim for unpaid rent is dismissed.

**As April 2016 rent has not been paid I find that the landlord is entitled to compensation in the sum of \$1,400.00.**

As the landlords' claim has merit I find, pursuant to section 72 of the Act that the landlord is entitled to recover the \$100.00 filing fee from the tenants 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 \$100.00 from the \$700.00 security deposit in satisfaction of the claim. The landlord is now holding a security deposit in the sum of \$600.00.~~

**Pursuant to section 72 of the Act I find that the landlord may retain the \$700.00 security deposit in partial satisfaction of the claim.**

**Based on these determinations I grant the landlord a monetary Order in the sum of \$800.00 (\$1,400.00 plus the \$100.00 filing fee less \$700.00 security deposit.) In the event that the tenants do not comply with this Order, it may be served on the tenants, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court**

The tenants' application is dismissed.

### Conclusion

The landlord is entitled to an Order of possession based on unpaid rent and cause.

**The landlord is entitled to compensation for unpaid April 2016 rent.**

**The landlord is entitled to retain the security deposit.**

**The landlord is entitled to filing fee costs.**

**The claim for May 2016 rent is premature.**

~~The landlord may retain \$100.00 from the security deposit for filing fee costs.~~

The tenants' application is dismissed

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*.

**CORRECTED: April 29, 2016**

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Residential Tenancy Branch