



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding VANCOUVER EVICTION SERVICES [tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes:

OPR, CNR, MT, 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, a monetary Order for unpaid rent, 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.

The Agent for the Landlord stated that on June 01, 2016 the Application for Dispute Resolution, the Notice of Hearing and documents the Landlord submitted to the Residential Tenancy Branch on June 01, 2016 were sent to the Tenant, via registered mail. The Landlord submitted Canada Post documentation that corroborates this statement. The Tenant stated that these documents were provided to him by his daughter on June 01, 2016, who found them posted on the door. As the Tenant acknowledged receiving these documents, I find that they have been sufficiently served for the purposes of these proceedings, pursuant to section 71(2)(b) of the *Residential Tenancy Act (Act)*.

The Tenant filed an Application for Dispute Resolution, in which the Tenant applied for more time to cancel a Notice to End Tenancy, to cancel a Notice to End Tenancy for Unpaid Rent, and for authority to reduce the rent.

The Tenant stated that the Application for Dispute Resolution and the Notice of Hearing were sent to the Landlord, via registered mail, although he cannot recall the date they were mailed. The Agent for the Landlord stated that these documents were received in the mail, although she is not certain of the date of receipt. On the basis of the undisputed evidence I find that these documents have been served in accordance with section 89 of the *Act*.

On June 07, 2016 the Landlord submitted an amended Application for Dispute Resolution, in which the Landlord applied to amend a minor typographical error on the Ten Day Notice to End Tenancy for Unpaid Rent. On June 09, 2016 the Landlord submitted an additional two pages of evidence. The Agent for the Landlord stated that these documents were posted on the door of the rental unit on June 07, 2016 or June 09, 2016. The Tenant stated that he received these documents in the mail sometime in early June of 2016. As the Tenant acknowledged receiving these documents, I find that they have been sufficiently served for the purposes of these proceedings, pursuant to section 71(2)(b) of the *Act*.

On June 09, 2016 the Tenant submitted an additional nine pages of evidence. The Tenant stated that these documents were not served to the Landlord. As the evidence was not served to the Landlord, it was not accepted as evidence for these proceedings.

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

#### Preliminary Matter

At the hearing the Tenant stated that he application for a rent reduction relates to deficiencies with the rental unit. He acknowledged that there is nothing in his Application for Dispute Resolution or in documents accepted as evidence for these proceedings that explain why the Tenant is seeking a rent reduction.

The Tenant was advised that his application for a rent reduction was being refused, pursuant to section 59(5)(a) of the *Act* because his Application for Dispute Resolution did not provide sufficient particulars of this claim, as is required by section 59(2)(b) of the *Act*. In reaching this conclusion I was strongly influenced by the absence of any reference to the reason for the rent reduction. I find that proceeding with the claim for a rent reduction would be prejudicial to the Landlord, as the absence of particulars makes it difficult, if not impossible, for the Landlord to adequately prepare a response to the application for a rent reduction.

The Tenant retains the right to file another Application for Dispute Resolution in which he applies for a rent reduction.

#### Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession?

Should a Ten Day Notice to End Tenancy be set aside?

Should the Tenant be granted more time to apply to cancel a Notice to End Tenancy?

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

#### Background and Evidence

The Landlord and the Tenant agree that:

- this Tenant moved into the rental unit in 2006;
- the parties signed a tenancy agreement that declared a tenancy began on April 01, 2013;
- the Tenant agreed to pay monthly rent of \$1,560.00 by the first day of each month; and

- the Tenant paid a security deposit of \$750.00 on October 01, 2006.

The Landlord submitted an Account Statement that outlines the amount of rent that was paid between January 01, 2015 and May 03, 2016, which indicates that rent of \$14,685.75 was owed on May 03, 2016. The Tenant agreed that this document correctly reflects the rent payments he has made during this period.

The Agent for the Landlord stated that rent was not paid for June of 2016 which brings the total rental arrears to \$16,245.75. The Tenant agrees rent has not been paid for June of 2016.

The Tenant stated that he believes the Landlord owes him money because he has been paying for heat during his tenancy and he has recently noticed that the tenancy agreement indicates heat is included with the rent.

The Agent for the Landlord stated that a Ten Day Notice to End Tenancy for Unpaid Rent, which had a declared effective date of May 28, 2016, was personally served to an adult male on May 18, 2016. At the hearing the Tenant stated that he received this Notice from his daughter on May 19, 2016. In his Application for Dispute Resolution the Tenant declared that he received this Notice on May 20, 2016.

The Ten Day Notice to End Tenancy for Unpaid Rent, which was submitted in evidence:

- declares that rent of \$14,685.75 is overdue;
- names the Tenant;
- is signed and dated by an agent for the Landlord;
- identifies the street numbers of the Tenant's service address as 15009, which is correct; and
- declares that the Tenant must vacate the rental unit, which is incorrectly identified with the street numbers 1509.

The Tenant stated that he was unable to file an Application for Dispute Resolution on May 21, 2016, May 22, 2016, or May 23, 2016, as the Residential Tenancy Branch office was closed. He stated that he attempted to file the Application for Dispute Resolution on May 24, 2016 but he did not have the fee for filing the Application on that date so he returned the next day and filed the Application for Dispute Resolution. The Agent for the Landlord stated that the Landlord does not oppose the Tenant's application for more time to apply to cancel the Notice to End Tenancy.

### Analysis

On the basis of the undisputed evidence, I find that the Tenant entered into a tenancy agreement with the Landlord that required the Tenant to pay monthly rent of \$1,560.00 by the first day of each month.

On the basis of the Account Statement that shows rent of \$14,685.75 was due on May 03, 2016; on the undisputed evidence that the statement accurately reflects the rent payments that have been made; and on the undisputed testimony that rent has not been paid for June of 2016, I find that the Tenant currently owes \$16,245.75 in rent.

Section 26(1) of the *Act* requires a tenant to pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent. As

the Tenant is required to pay rent pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$16,245.75 in outstanding rent to the Landlord.

As the Tenant is required to pay rent when it was due whether or not the landlord complies with this *Act*, I did not consider the Tenant's testimony that he has been paying for heat during the tenancy, which was included in his rent.

As there is no indication that the Tenant's Application for Dispute Resolution included an application to recover heating costs, that claim was not considered at these proceedings. The parties were advised that the Tenant has the right to file another Application for Dispute Resolution seek compensation from the Landlord, pursuant to section 27 of the *Act*, if the Tenant believes he has been paying for a service (heat) that was to be provided with the tenancy.

Section 46(1) of the *Act* entitles landlords to end the tenancy within ten days, by providing proper written notice, if rent is not paid when it is due. On the basis of the testimony of the Tenant I find that he received the Ten Day Notice to End Tenancy, served pursuant to section 46 of the *Act*, by May 19, 2016. I therefore find that the Notice had been sufficiently served for the purposes of these proceedings, pursuant to section 71(2)(b) of the *Act*, by May 19, 2016.

As the Tenant acknowledged receiving the Notice to End Tenancy on May 19, 2016 he had until May 24, 2016 to dispute the Notice. Even if the Tenant had received the Notice to End Tenancy on May 18, 2016, as the Landlord contends, he had until May 24, 2016 to dispute the Notice, as the Residential Tenancy Branch was closed on May 23, 2016. The evidence shows that the Tenant applied to cancel this Notice to End Tenancy on May 25, 2016, which is one day late.

As the Landlord did not oppose the Tenant's application for more time to apply to cancel the Notice to End, I find it reasonable to grant the Tenant more time to file an application to dispute the Notice, pursuant to section 66(1) of the *Act*. In reaching this conclusion I was heavily influenced by the undisputed evidence that the Tenant attempted to file his Application for Dispute Resolution on time but was one day late as he had difficulty paying the filing fee.

Section 52 of the *Act* stipulates that for a notice to end tenancy to be effective, it must be in writing and must:

(a) be signed and dated by the landlord or tenant giving the notice,

- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.

I find that the Ten Day Notice to End Tenancy dated May 18, 2016 complies with section 52 of the *Act* and is, therefore, a valid and effective notice. Although the address of the rental unit is cited incorrectly on one area of the Ten Day Notice to End Tenancy, it is correctly cited elsewhere on the Notice. Given the relatively minor error in the address of the rental unit I find that the Tenant knew, or should have known, that the Notice to End Tenancy related to the rental unit he was occupying. In reaching this conclusion I was heavily influenced by the fact the Tenant disputed the Notice to End Tenancy, which indicates he clearly understood the Notice to End Tenancy related to his tenancy.

As the Tenant was served with a valid Ten Day Notice to End Tenancy for Unpaid Rent and the Tenant has not yet paid all of the overdue rent, I dismiss the Tenant's application to cancel that Notice to End Tenancy and I grant the Landlord's application for an Order of Possession.

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 at 1:00 p.m. on June 30, 2016. 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 \$16,345.75 which includes \$16,245.75 in unpaid rent and \$100.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to keep the Tenant's security deposit of \$750.00 plus interest of \$23.66, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$15,572.09. In the event that 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: June 23, 2016

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Residential Tenancy Branch

