



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes CNR, OPR, MNR, MDSD & FF

### Introduction

The Application for Dispute Resolution filed by the Tenant makes the following claims:

- a. An order to cancel the 10 day Notice to End Tenancy dated June 1, 2015
- b. A monetary order in the sum of \$1500.
- c. An order authorizing the tenant to change the locks.

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 \$1100 for unpaid rent
- c. An order to retain the security deposit
- d. An order to recover the cost of the filing fee

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. The parties acknowledged they had received the documents of the other party.

I find that the 10 Notice to End Tenancy was served on the Tenant by posting on June 2, 2016. Further I find that the Application for Dispute Resolution/Notice of Hearing filed by the Tenant was served on the landlord by posting on June 14, 2016. I find that the Application for Dispute Resolution filed by the Landlord was sufficiently served on the Tenant as the Tenant acknowledged service of the same. With respect to each of the applicant's claims I find as follows:

### 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 June 1, 2016
- b. Whether the tenant is entitled to a monetary order and if so how much?
- c. Whether the tenant is entitled to recover the cost of the filing fee?
- d. Whether the landlord is entitled to an Order for Possession?

- e. Whether the landlord is entitled to A Monetary Order and if so how much?
- f. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- g. Whether the landlord is entitled to recover the cost of the filing fee?

#### Background and Evidence

The parties entered into a month to month written tenancy agreement that provided that the tenancy would start on May 1, 2016. The rent is \$1100 per month payable on the first day of each month. The tenancy agreement provided that the tenant was to pay a security deposit of \$550. The tenant paid a security deposit of \$500 at the start of the tenancy. The tenancy agreement also provided that the "Tenant will give landlord 12 post-dated rent cheques effective immediately with the first cheque dated June 1, 2016 and dated for the 1<sup>st</sup> of every month up until April 2017."

The tenant(s) failed to pay the rent for the months of June and July and the sum of \$2200 remains owing. The tenant continues to live in the rental unit.

#### Tenant's Application:

The tenant sought a monetary order in the sum of \$1500. However, she failed to provide a monetary order worksheet and failed to particularize her claim to indicate how much she was claiming for cleaning and for compensation for harassment and other claims. She testified she has photographs as to the condition of the rental unit when she moved in. However, she failed to provide the Branch with copies of those photos. I determined that to proceed with the tenant's monetary claim would result in a denial of natural justice and a breach of the Rules of Procedure as the tenant has not sufficiently identified her claim in order for the landlord to properly defend herself.. Further the evidence of the tenant is inadequate. The tenant's monetary claim does not relate to the other matters in dispute in this hearing. In the circumstances I determined it was appropriate to sever this claim so that it is no longer part of this hearing. The tenant has the right to file a new Application for Dispute Resolution for a monetary order.

I ordered that the tenant's application to cancel the 10 day Notice to End Tenancy dated June 2, 2016 be dismissed for the following reasons:

- The tenant acknowledged that the form of Notice on her file is a copy that she made. The actual Notice served by the landlord that is found on the landlord's file is in the proper form and was signed by the landlord.
- The tenant acknowledged that she has not paid the rent for June and July and the sum of \$2200 remains outstanding.
- Section 26(1) of the Residential Tenancy Act provides as follows:

**26 (1)** A tenant must 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.

- The tenant testified she is able to pay the rent but held back pending the determination of this hearing. The tenant does not have the legal right to withhold the payment of rent even if the Tenant had a monetary claim. The validity of the monetary claim would first have to be determined and a monetary award made before the Tenant had the legal right to withhold the rent.
- Further, I find that the Notice to End Tenancy was served on the Tenant on June 2, 2016. The tenant had 5 days to pay the rent in which case the Notice is void. If the Tenant pays after the 5 day period the landlord can accept the payment for “use and occupation” or the landlord can reinstate the tenancy. The landlord has made it clear she is not interested in reinstating the tenancy.
- The tenant testified the landlord has not been at the rental unit since early June and has not been home. She testified she visited the landlord’s home a few times but no one was home. The tenancy agreement provides that the tenant must pay the rent by post dated cheques. The tenant failed to do this. I determined the tenant has not tendered the rent payment.

Analysis - Order of Possession:

I determined the landlord was entitled to an Order for Possession. There is outstanding rent. The Tenant’s application to set aside the Notice to End Tenancy and the time to do so has expired. In such situations the Residential Tenancy Act provides the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date. Accordingly, I granted the landlord an Order for Possession on 5 days notice.

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.

I dismissed the tenant’s claim to change the locks as the tenancy is coming to an end..

Analysis - Monetary Order and Cost of Filing fee:

I determined the tenant has failed to pay the rent for the month(s) of June and July and the sum of \$22000 remains outstanding. I granted the landlord a monetary order in the sum of \$2200 plus the sum of \$100 in respect of the filing fee for a total of \$2300.

Security Deposit:

I determined the security deposit plus interest totals the sum of \$500. I ordered the landlord may retain this sum thus reducing the amount outstanding under this monetary order to the sum of \$1800.

Conclusion:

I ordered that the tenant's claim for a monetary order be severed. The tenant has liberty to re-apply. I dismissed the tenant's application to cancel the 10 day Notice to End Tenancy and the claim to change the locks without leave to re-apply. I granted an Order for Possession on 5 days notice. I ordered that the landlord shall retain the security deposit of \$500. In addition I ordered that the Tenant pay to the Landlord the sum of \$1800.

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: July 19, 2016

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Residential Tenancy Branch