



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes            OPC, MNR, FF

### Introduction

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

- a. An Order for Possession for cause
- b. A monetary order in the sum of \$1450 for unpaid rent
- c. 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.

I find that the one month Notice to End Tenancy was personally served on the Tenant on June 12, 2016. Further I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the Tenant on August 11, 2016 by mailing through Canada Post. 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 landlord is entitled to an Order for Possession?
- b. Whether the landlord is entitled to A Monetary Order and if so how much?
- c. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- d. Whether the landlord is entitled to recover the cost of the filing fee?

### Background and Evidence

The tenant entered into a written tenancy agreement with the previous owner on November 1, 2015. The rent was \$1450 per month payable in advance on the first day of each month. The present landlord purchased the property in May 2016. The parties signed a written tenancy

agreement that provided that the tenancy started on November 10, 2015, the rent was \$1450 payable in advance on the 15<sup>th</sup> day of each month and that the security deposit was \$725.

The tenant failed to pay the rent for the period June 1, 2016 to June 15, 2016.

The landlord served a one month Notice to End Tenancy on the Tenant on June 12, 2016 setting the end of tenancy for July 15, 2016.

There are e-mails exchanged between the parties indicating the landlord agreed to extend the end of tenancy date to August 15, 2016.

The tenant testified there was an oral agreement to extend the end of tenancy date to October 2016. The landlord disputes this.

The landlord testified he has re-rented the rental unit with the new tenants due to take possession on August 15, 2016. The new tenants are presently living in a motel.

### Analysis

#### Analysis - Order of Possession:

I determined the landlord was entitled to an Order for Possession. The landlord served a one month Notice to End Tenancy on the Tenant in person on June 12, 2016. The Tenant(s) have not made an 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. The tenant failed to dispute the Notice within 10 days of receipt of the Notice and it is no longer possible to do so as the end of tenancy date has passed.

Policy Guideline #36 includes the following:

#### **“Notice to End**

##### **Application for Arbitration Filed After Effective Date**

An arbitrator may not extend the time limit to apply for arbitration to dispute a Notice to End if that application for arbitration was filed after the effective date of the Notice to End.

For example, if a Notice to End has an effective date of 31 January and the tenant applies to dispute said Notice to End on 1 February, an arbitrator has no jurisdiction to hear the matter ***even where the tenant can establish grounds that there were exceptional circumstances***. In other words, once the effective date of the Notice to End has passed, there can be no extension of time to file for arbitration.”

I do not accept the submission of the tenant that the landlord does not have grounds to end the tenancy as the misconduct took place before the present landlord took ownership of the rental unit. Further, the tenant failed to prove there was an agreement to extend the end of tenancy

date until October. The landlord has acted on the basis of an end of tenancy date of August 15, 2016 as he has found new tenant who are moving from out of town.

**Accordingly, I granted the landlord an Order for Possession on 2 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.

Analysis - Monetary Order and Cost of Filing fee:

I determined the tenant has failed to pay the rent for the period June 1, 2016 to June 15, 2015. I do not accept the submission of the tenant that the payment she made to the previous owner in May was for the period May 15, 2016 to June 15, 2016. The written tenancy agreement indicates it was for the period May 1, 2016 to May 31, 2016. **I granted the landlord a monetary order in the sum of \$725 plus the sum of \$100 in respect of the filing fee for a total of \$825.**

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.

Conclusion:

In summary I granted the landlord an Order for Possession on 2 days notice. I ordered that the Tenant pay to the Landlord the sum of \$825.

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: August 29, 2016

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Residential Tenancy Branch