



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Vancouver Eviction Services  
and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes:**

**OPR, MNR, MNSD, MNDC, AS, RR, FF**

### **Introduction**

This was a cross-application hearing.

On November 17, 2016 the tenant applied to cancel a 10 day Notice to end tenancy for unpaid rent issued on November 11, 2016, to recover the cost of emergency repairs, an order the tenant be allowed to assign or sublet the unit allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided and to allow the tenant to serve documents in a different way that required by the Act.

On November 23, 2016 the landlord applied requesting an order of possession based on unpaid rent, a monetary order for unpaid rent and loss of rent revenue, to retain the security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

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

### **Preliminary Matters**

I have applied section 2.3 of the Rules of Procedure, which provides:

#### ***2.3 Related issues***

*Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.*

The tenants' application includes matters that are not directly related to the issue of rent payment. Therefore, I will consider only the issues regarding rent payment. The balance of the tenants' application is dismissed with leave to reapply.

I note that the tenants' application included a claim in the sum of \$250.00. A monetary worksheet setting out a claim in the sum of \$27,450.00 was included in evidence. Claims exceeding \$25,000.00 cannot be considered.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent or should the Notice to end tenancy be cancelled?

Is the landlord entitled to a monetary order for unpaid rent?

May the landlord retain the security deposit paid by the tenant?

Background and Evidence

The tenancy commenced on November 1, 2016. The parties signed a tenancy agreement on November 3, 2016. Rent is \$2,500.00 due on the first day of each month.

The tenant said he received a copy of the tenancy agreement on November 10, 2016. Then the tenant said he could not recall when the agreement was received. The landlord said that a copy of the tenancy agreement was given to the tenant on the date it was signed.

The tenancy agreement included an addendum that contained a term which provided:

*"The house is rented to only 6 people if there will be more than that your rent will be increased to \$500.00 per person and the utilities will go up or you guys will move from the house."*

(Reproduced as written)

The tenant M.R. signed the tenancy agreement and initialed the addendum. Copies of both documents were supplied as evidence. The signature page of the tenancy agreement was not supplied, but the parties confirmed that only the single tenant M.R. signed the agreement.

The landlord stated that on November 11, 2016 a 10 day Notice ending tenancy for unpaid rent or utilities, which had an effective date of November 26, 2016, was served by registered mail. The tenant could not recall the date the Notice was received but the tenant disputed the Notice on November 17, 2016.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$2,500.00 within five days after the tenant was assumed to have received the Notice. The Notice also indicated that the tenant was presumed to have accepted that the tenancy was ending and that the tenant must move out of the rental by the date set

out in the Notice unless the tenant filed an Application for Dispute Resolution within five days.

The landlord said that a cheque issued on November 3, 2016 in the sum of \$1,500.00 was given to the landlord and successfully deposited. A copy of the cheque, marked as "rental deposit" by the tenant, was supplied as evidence. The landlord said that \$1,250.00 was applied to the security deposit and the balance of \$250.00 was applied to November rent due.

The landlord has received an additional \$250.00 payment from the tenant. A copy of a receipt issued on November 10, 2016 for use and occupancy only, was supplied as evidence.

The landlord has claimed the following rent:

- \$1,750.00 November 2016;
- \$2,500.00 December, 2016; and
- \$2,500.00 January 2017.

The tenant confirmed that no rent has been paid since the \$250.00 payment was made. The tenant said the landlord has caused the problem by denying the other occupants of the home were also renting from the landlord. As a result the government ministry that provides housing support has refused to issue rent payments. The landlord has also refused payment from the other individuals who live in the rental unit. The tenant said that as a result of the refusal of the landlord to confirm that other individuals are tenants, the rent has gone unpaid.

The tenant said he complied with the Notice by applying to dispute it within five days. It was explained that when disputing a Notice ending tenancy for unpaid rent the tenant should bring forward evidence in support of having paid the rent.

The tenant said that as a result of the actions of the landlord there was a stop pay placed on the tenants' housing cheque. There is also a backlog at the ministry responsible for processing payments and there is an on-going investigation. All of these issues have caused a problem with the processing of rent cheques to the other individuals who live in the home.

The agent for the landlord said she called and spoke to the tenants' ministry worker on November 24, 2016 and explained that an eviction Notice had been issued. The worker was supplied with a copy of the Notice ending tenancy. The agent made it clear to the worker that the tenancy was going to end.

The tenant said it is because of the landlords' actions that the rent has not been paid. The landlord had a verbal contract with the other tenants but told the ministry they were not her tenants.

### Analysis

Section 90 of the Act stipulates that a document that is sent by mail is deemed served on the fifth day after mailing. Therefore, as the tenant could not recall the date the Notice was received I find that the Notice is deemed served effective November 16, 2016.

Section 46(1) of the Act stipulates that a 10 day Notice ending tenancy is effective 10 days after the date that the tenant receives the Notice. As the tenant is deemed to have received this Notice on November 16, 2016, I find that the earliest effective date of the Notice is November 26, 2016, the date on the Notice.

In the absence of evidence to the contrary, I find that the tenant was served with a Notice ending tenancy that required the tenant to vacate the rental unit on November 26, 2016, pursuant to section 46 of the Act.

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. The tenant did dispute the Notice within five days of receipt, but provided no evidence in support of rent payment. The tenant has confirmed that no further rent has been paid, outside of that set out by the landlord. The tenant has blamed the landlord for the inability to pay.

Residential Tenancy Branch policy defines occupant as:

*Where a tenant allows a person who is not a tenant to move into the premises and share the rent, the new occupant has no rights or obligations under the tenancy agreement, unless all parties agree to enter into a tenancy agreement to include the new occupant as a tenant.*

I find that the other individuals referred to as tenants by M.R. are in fact occupants. The addendum to the tenancy agreement refers to six other renters. None of these individuals signed the tenancy agreement; only the applicant, M.R. signed. As a result I find that there is a single tenant; M.R.

Therefore, I find that M.R. is solely responsible for payment of the rent, as required by the terms of the tenancy agreement. It is correct of the landlord to refuse payment from any individual other than the tenant, as the landlord has contracted with only a single tenant. None of the other individuals who the tenant says live in the rental unit are identified on the tenancy agreement, nor did any of those individuals sign the tenancy agreement.

Whether there are issues with the ability of occupants to obtain income to support the tenants' requirement to pay all of the rent; it falls to the tenant to make those payments. If the landlord told the ministry the occupants were not her tenants, the landlord would be correct.

The tenant did not ensure that all of the rent was paid within five days of November 16, 2016. In fact no rent has been paid for December 2016 or January 2017. Therefore, pursuant to section 46(5) of the Act, I find that the tenant accepted that the tenancy has ended on the effective date of the Notice; November 26, 2016.

Therefore, I find that the tenant has been over-holding in the rental unit since November 26, 2016.

RTB policy suggests:

*A tenant is not liable to pay rent after a tenancy agreement has ended pursuant to a Notice ending tenancy for unpaid rent to these provision, however if a tenant remains in possession of the premises (over holds), the tenant will be liable to pay occupation rent on a per diem basis until the landlord recovers possession of the premises.*

As a result I find that the landlord is entitled to compensation in the sum of \$4,496.57. (Unpaid rent to November 26, 2016 and per diem rent of \$82.19/ day to January 3, 2017. The balance of the claim is dismissed with leave to reapply should there be further loss of rent revenue.

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 tenant 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 the \$1,250.00 security deposit in partial satisfaction of the claim.

The landlord has been granted an order of possession that is effective two days after service to 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.

Based on these determinations I grant the landlord a monetary order for the balance of \$3,346.57. 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.

### Conclusion

The landlord is entitled to an order of possession.

The landlord is entitled to a monetary order for unpaid rent and per diem rent (loss of rent revenue.)

The landlord may retain the security deposit.

The landlord is entitled to filing fee costs.

The landlord has leave to reapply claiming any further loss of rent revenue.

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*.

Dated: January 03, 2017

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Residential Tenancy Branch