



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

OPR, MNR, MNSD, MNDC, FF

### Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for an Order of Possession for Unpaid Rent or Utilities, a monetary Order for unpaid rent or utilities, 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 January 21, 2017 the Application for Dispute Resolution and the Notice of Hearing were sent to the Tenant, via registered mail. The Agent for the Landlord stated that on January 24, 2017 the Application for Dispute Resolution and the Notice of Hearing were personally served to the Tenant. The Tenant acknowledged receiving these documents from the Landlord on January 24, 2017.

On January 26, 2017 the Landlord submitted 12 pages of evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that only the Ten Day Notice to End Tenancy that was included in this evidence package was served to the Tenant. The Tenant stated that she received a copy of the Ten Day Notice to End Tenancy when she received the Application for Dispute Resolution.

As the Tenant acknowledged receipt of the Ten Day Notice to End Tenancy it was accepted as evidence for these proceedings. As none of the other 12 pages of evidence were served to the Tenant, they were 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.

### Issue(s) to be Decided

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

### Background and Evidence

The Agent for the Landlord stated that the Landlord hired the Tenant to clean the rental unit and that she began living in the unit on December 03, 2016 without the consent of the Landlord. She stated that after the Tenant moved in the Landlord agreed that she could live in the rental unit in exchange for monthly rent of \$2,400.00.

The Tenant stated that:

- she was given the keys to the rental unit by the Landlord's mother, with the understanding that she would be living in the rental unit;
- she moved into the rental unit on, or about, December 10, 2016;
- she agreed to pay monthly rent of \$2,400.00;
- the Landlord initially agreed to clean the rental unit;
- the parties subsequently agreed that she would clean the rental unit in exchange for a \$350.00 rent reduction; and
- the parties agreed that the Landlord would pay any costs associated with cleaning.

The Landlord and the Tenant agree that:

- the rent was due by the first day of each month;
- the Tenant paid a security deposit of \$800.00 on, or about, December 11, 2016;
- the Tenant did not pay any rent for December of 2016, January of 2017, or February of 2017 until January 23, 2017, at which time she paid \$400.00;
- a Ten Day Notice to End Tenancy for Unpaid Rent, which had an effective date of January 14, 2017, was personally served to the Tenant on January 04, 2017; and
- the Tenant is still living in the rental unit.

The Landlord is seeking compensation for unpaid rent and lost revenue for the month of February of 2017.

### Analysis

On the basis of the undisputed evidence I find that the Landlord and the Tenant entered into a tenancy agreement which required the Tenant to pay monthly rent of \$2,400.00 by the first day of each month.

I find that there is insufficient evidence to determine when the Tenant moved into the rental unit, although I am satisfied that she was living in the rental unit on December 10, 2016. In reaching this conclusion I was influenced by the uncorroborated testimony of the Agent for the Landlord who stated that the Tenant began living in the rental unit on December 03, 2016 without the consent of the Landlord and by the uncorroborated testimony of the Tenant who stated she moved into the rental unit on, or about, December 10, 2016.

As there is insufficient evidence to establish that the Tenant was living in the rental unit prior to December 10, 2016, I find that she is only obligated to pay pro-rated rent for December, in the amount of \$1,703.22. (22/31 of \$2,400.00) On the basis of the undisputed evidence that the Tenant paid \$400.00 in rent on January 23, 2017, I find that the Tenant currently owes \$1,303.22 in rent for December of 2016.

As the Landlord does not acknowledge agreeing to reduce the rent for December for cleaning and there is no evidence to corroborate the Tenant's testimony that the Landlord agreed to reduce the rent for cleaning, I am unable to reduce the rent for December as a result of cleaning. The Tenant retains the right to file an Application for Dispute Resolution seeking compensation for cleaning the unit.

On the basis of the undisputed evidence that no additional rent has been paid, I find that the Tenant currently owes \$2,400.00 in rent for January of 2017.

Section 46(1) of the *Residential Tenancy Act (Act)* entitles landlords to end a tenancy within ten days if rent is not paid when it is due by providing proper written notice. On the basis of the undisputed evidence I find that the Ten Day Notice to End Tenancy, served pursuant to section 46 of the *Act*, was personally served to the Tenant on January 04, 2017, which required the Tenant to vacate the unit by January 14, 2017.

Section 46 of the *Act* stipulates that a Tenant has five days from the date of receiving the Notice to End Tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. I have no evidence that the Tenant exercised either of these rights and, pursuant to section 46(5) of the *Act*, I find that the Tenant accepted that the tenancy has ended. On this basis I grant the landlord an Order of Possession.

As the Tenant did not vacate the rental unit by January 14, 2017, I find that the Tenant is obligated to pay rent, on a per diem basis, for the days the Tenant remained in possession of the rental unit. As the Tenant has already been ordered to pay rent for the period between January 15, 2017 and January 31, 2017, I find that the Landlord has been fully compensated for that period.

As the Tenant still has possession of the rental unit I find that she must pay rent for the period between February 01, 2017 and February 20, 2017, at a daily rate of \$85.71, which equates to \$1,714.20.

I find that the Tenant fundamentally breached the tenancy agreement when the Tenant did not pay rent when it was due. I find that the Tenant fundamentally breached section 46(5) of the *Act* when the Tenant did not vacate the rental unit by the effective date of the Ten Day Notice to End Tenancy. I find that the continued occupancy of the rental unit makes it difficult, if not impossible, for the Landlord to find new tenants for the remainder of February. I therefore find that the Tenant must compensate the Landlord for the loss of revenue it can be reasonably expected to experience for the remainder of February, which is \$685.80.

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 two days after it is served upon 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.

The Landlord has established a monetary claim, in the amount of \$6,203.22, which includes \$6,103.22 in unpaid rent/lost revenue and \$100.00 in compensation for the fee paid to file 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 \$800.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$5,403.22. 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 *Act*.

Dated: February 20, 2017

---

Residential Tenancy Branch