



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

<u>Dispute Codes</u>	Landlord:	OPR OPC OPB MNR MNDC FF ET
	Tenant:	CNR MNDC OLC AS O

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”).

The Landlord's Application was received at the Residential Tenancy Branch on March 16, 2017 (the “Landlord's Application”). The Landlord applied for the following relief pursuant to the *Act*:

- an order of possession for unpaid rent or utilities;
- an order of possession for cause;
- an order of possession for breach of an agreement;
- a monetary order for unpaid rent or utilities;
- a monetary order for money owed or compensation for damage or loss;
- an order of possession granting an early end to the tenancy pursuant to section 56 of the *Act*; and
- an order granting recovery of the filing fee.

The Landlord testified his Application package, including the Notice of a Dispute Resolution Hearing and documentary and digital evidence, was served on the Tenant in person on March 19, 2017. The Tenant acknowledged receipt on that date. I find the Tenant was duly served with the Landlord's Application package on March 19, 2017.

The Tenant's Application was received at the Residential Tenancy Branch on March 8, 2017 (the "Tenant's Application"). The Tenant applied for the following relief pursuant to the *Act*:

- an order cancelling a notice to end tenancy for unpaid rent or utilities;
- a monetary order for money owed or compensation for damage or loss;
- an order that the Landlord comply with the *Act*, Regulations or a tenancy agreement;
- an order that the Tenant be permitted to assign or sublet the rental unit; and
- other unspecified relief.

The Tenant testified her Application package was served on the Landlord in person on March 8, 2016. In addition, the Tenant provided the Landlord with further documentary evidence, in person, on March 16, 2017. The Landlord acknowledged receipt of both packages. I find the Landlord was duly served with the Tenant's Application package and subsequent documentary evidence on March 8 and March 16, 2017, respectively.

The parties attended the hearing on their own behalves and provided affirmed testimony. Neither party raised any issue with respect to service or receipt of the above documents. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Preliminary and Procedural Matters

During the hearing, it became apparent that the most important issue to address was whether or not the tenancy would continue and whether or not the landlord was entitled to a monetary order for unpaid rent. The parties were informed that, pursuant to Rule 2.3 of the Residential Tenancy Branch Rules of Procedure, I found it appropriate to exercise my discretion to sever the all but the Landlord's Application to end the tenancy for unpaid rent or utilities (OPR) and for a monetary order for unpaid rent or utilities (MNR), and the Tenant's request for an order cancelling the notice to end tenancy for unpaid rent or utilities (CNR). The parties are granted leave to reapply for the remainder of the relief sought at a later date, as appropriate.

### Issues to be Decided

1. Is the Landlord entitled to an order of possession for unpaid rent or utilities?
2. Is the Landlord entitled to a monetary order for unpaid rent or utilities?
3. Is the Landlord entitled to recover the filing fee?
4. Is the Tenant entitled to an order cancelling the notice to end tenancy for unpaid rent or utilities?

### Background and Evidence

The Tenant rents a private room in a 2-bedroom unit owned by the Landlord. The second bedroom has at various times been rented to other occupants under separate tenancy agreements. The kitchen, bathroom, and other facilities are shared between the occupants of the rental unit.

During the hearing, the parties confirmed the tenancy began when the Tenant moved into the rental unit on December 2, 2016. Rent in the amount of \$400.00 per month is due on the first day of each month. The Landlord did not require payment of a security deposit.

The Landlord testified the Tenant did not pay rent when due on February 1 and March 1, 2017. Accordingly, he served the 10 Day Notice on the Tenant, in person, on March 8, 2017. The Tenant did not dispute that she received the 10 Day Notice on that date. In addition, I note the Tenant did not dispute the 10 Day Notice issued on March 8, 2017, or amend her Application to dispute the 10 Day Notice. The Landlord also testified that the Tenant did not pay rent when due on April 1, 2017. Currently, rent in the amount of \$1,200.00 is outstanding.

In reply, the Tenant acknowledged rent has not been paid as claimed by the Landlord. She testified that the reason rent has been withheld is because the Landlord moved into the second bedroom in the rental unit in January 2017, and has entered the rental unit on multiple occasions without notice.

The Landlord denied moving into the second bedroom. He stated he stored some of his belongings in the second bedroom while he considered what he wanted to do with that space. He also indicated he had accessed the rental unit on occasion to deal with a rat problem the Tenant brought to his attention. The Landlord confirmed the second bedroom was never part of the agreement with the Tenant and denied she is entitled to have access to this space.

The Landlord also sought to recover the \$100.00 filing fee paid to make the Landlord's Application.

### Analysis

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows.

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent. When a tenant does not pay rent when due, section 46 of the *Act* permits a landlord to end the tenancy by issuing a notice to end tenancy. A tenant who receives a notice to end tenancy under this section has five days after receipt to either pay rent or file an application for dispute resolution.

The Landlord testified the 10 Day Notice was served on the Tenant, in person, on March 8, 2017. The Tenant did not dispute that she received the 10 Day Notice on that date, and provided a copy of the 10 Day Notice with her documentary evidence. I find the Tenant received the 10 Day Notice on March 8, 2017.

Further, the Tenant acknowledged she has not paid rent as alleged by the Landlord. Currently, \$1,200.00 is outstanding. Despite the Tenant's allegations, I find there is insufficient evidence before me to conclude the Tenant had a right to deduct rent. Accordingly, I grant the Landlord an order of possession, which will be effective two (2) days after service on the Tenant.

In addition, I find Landlord is entitled to a monetary award of \$1,200.00 for outstanding rent, plus the \$100.00 filing fee paid to make the Landlord's Application. Accordingly, pursuant to section 67 of the *Act*, I grant the Landlord a monetary order in the amount of \$1,300.00.

The Tenant's Application to cancel the 10 Day Notice is dismissed, with leave to re-apply for the remainder of the relief sought in the Tenant's Application at a later date, as appropriate.

### Conclusion

The Landlord is granted an order of possession, which will be effective two (2) days after service on the Tenant. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Landlord is granted a monetary order in the amount of \$1,300.00. This order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

The remainder of the Landlord's Application is dismissed, with leave to re-apply for the remainder of the relief sought at a later date, as appropriate.

The Tenant's Application to cancel the 10 Day Notice is dismissed. The Tenant is granted leave to re-apply for the remainder of the relief sought at a later date, as appropriate.

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: April 6, 2017

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Residential Tenancy Branch