



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding METRO VANCOUVER HOUSING CORPORATION  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNSD, MNR, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities issued on June 6, 2017 (the “Notice”), a Monetary Order for unpaid rent, an Order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

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.

### Issues to be Decided

1. Has the Tenant breached the *Act* or tenancy agreement entitling the Landlord to an Order of Possession?
2. Is the Landlord entitled to a Monetary Order for unpaid rent?

3. Should the Landlord be entitled to retain the Tenant's security deposit?
4. Should the Landlord recover the filing fee?

### Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement which indicated this tenancy began October 16, 2015. The tenancy agreement further provided that unit rent was payable in the amount of \$936.00 per month. Monthly rent was subsidized based on the Tenant's income and at the time the agreement was signed was reduced by a rental subsidy of \$273.00. A security deposit in the amount of \$468.00 was paid on October 1, 2015.

Paragraph 7 of the tenancy agreement provides as follows:

#### **7. Rent Increase**

- (a) Subject to subparagraph 7(b) of this Tenancy Agreement, the Landlord may increase the Unit Rent in accordance with the "Rent Increase Provisions" of the Act (Sections 41, 42 and 43).
- (b) If at the time of a rent increase the Tenant receives Rental Assistance, then the Tenant hereby acknowledges and agrees that the rent of the Rental Unit is related to the Tenant's income and the Rental Unit is exempt from the requirements of the "Rent Increase Provisions" of the Act (Sections 41, 42 and 43).

Documentary evidence indicates that on March 1, 2017 the Tenant was informed that her rent would change to \$591.00 per month effective May 1, 2017. B.H. testified that the Tenant then disputed this amount with the subsidy department and upon further review, a secondary letter was sent out on March 28, 2017 to the Tenant indicating that there were further discrepancies and that the subsidy amount would be further reduced such that her rent would be \$963.00 per month effective May 1, 2017 (a copy of this letter was also provided in evidence by the Landlord). In this letter, the Tenant is informed that "market rent" for her rental unit is \$963.00 per month.

The Landlord issued a 10 day Notice to End Tenancy for non-payment of rent on June 6, 2017 indicating the amount of \$372.00 was due as of June 1, 2017 (the "Notice").

B.H. stated that the Tenant pay the requested \$963.00 for May 1, 2017 and then paid \$591.00 per month for June, July, August and September 2017. He confirmed that as of the date of the hearing, \$1,488.00 is outstanding for rent.

B.H. testified that the Tenant was served with the Notice on June 6, 2017 by posting to the rental unit door. Section 90 of the *Act* provides that documents served in this manner are deemed served three days later. Accordingly, I find pursuant to section 88 of the *Residential Tenancy Act*, that the Tenant was served with the Notice as of June 9, 2017.

The Notice informed the Tenant that the Notice would be cancelled if the outstanding rent was paid within five days of service, namely, June 14, 2017. The Notice also explains the Tenant had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution.

B.H. testified that the Tenant failed to make an application to dispute the Notice and also failed to pay the \$372.00 outstanding rent by June 14, 2017.

The Tenant testified as follows. She confirmed she did not pay the rent or apply to dispute the Notice. She also claimed she did not receive the Notice and stated that people are walking by her rental unit all the time and "someone must have taken the Notice" while she was at work.

The Tenant confirmed that in June she paid \$591.00. She claimed that she called the office and she was told there was a discrepancy but they would not talk to her on the phone and they needed to meet in person. The Tenant stated that she was unable to meet in person because she works during the weekdays and the office is closed on the weekends. She confirmed that she did not attempt to take time off to meet with her Landlord in person. The Tenant further stated that she talked to the person at the main office about her rent and that a few days later her rent went up even more. She confirmed she paid the full amount of rent of \$963.00 for May 2017 and then paid the \$591.00 for subsequent months.

The Tenant testified that she received the Landlord's Application for Dispute Resolution and evidence by registered mail. She confirmed that she received the Notice, although she testified she didn't "really read it".

In reply, B.H. stated that when the Tenant did not pay the appropriate amount of rent for June 2017, they provided her with a letter dated June 2, 2017 indicating she had until June 5, 2017 to pay the outstanding rent. The Tenant confirmed receipt of this letter but claimed she did not pay the additional \$372.00 as she needed a reason for why they had increased her rent.

### Analysis

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

I find, based on the documentary evidence filed, including the tenancy agreement and written communication to the Tenant, that the Tenant was obligated to pay monthly “Unit Rent” in the amount of **\$936.00**. This amount was affected by a potential subsidy, for which the Tenant became ineligible on May 1, 2017. The Landlord requested that the Tenant meet in person to discuss her subsidy amount and the Tenant declined this offer. While I accept the Tenant’s evidence that she is employed full time, it is unfortunate she did not make arrangements to meet with the Landlord to discuss her rent amount; I find her unwillingness to make such arrangements to be unreasonable considering the risk to her tenancy.

I accept the Landlord’s evidence that the Notice was posted to the Tenant’s door on June 6, 2017. I do not accept the Tenant’s evidence that “someone” removed it from her door. It is notable that the Landlord provided the Tenant with an opportunity to pay the outstanding rent by letter dated June 2, 2017. The Tenant confirmed receipt of this letter yet failed to pay as required as she stated she required a reason for the increase. I therefore find it more likely that she received the Notice and simply declined to pay the outstanding amount as she believed she was justified in withholding this amount until she received a satisfactory “reason”.

The evidence confirms that the Tenant did not pay the outstanding rent and did not apply to dispute the Notice and is therefore conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice.

Under section 26 of the *Act*, the Tenant must not withhold rent, even if the Landlord is in breach of the tenancy agreement or the *Act*, unless the Tenant has some authority under the *Act* to not pay rent. In this situation I find that the Tenant had no authority under the *Act* to not pay rent.

**I find that the Landlord is entitled to an Order of Possession effective two days after service on the Tenant.** This Order may be filed in the Supreme Court and enforced as an Order of that Court.

The parties agreed that the Tenant paid \$591.00 in rent for the months June, July, and August and September 2017. The tenancy agreement provides that “unit rent” was \$936.00. The evidence confirms that effective May 1, 2017 the Landlord requested the Tenant pay \$963.00 per month for “market rent”. It is unclear whether this was a typographical error, or if the Landlord expected payment in the amount of \$963.00 based on some increase to the “Unit Rent”.

As I am unable to determine the amount of rent owing, I dismiss, with leave to reapply, the Landlord’s monetary claim for unpaid rent and authority to retain the security deposit. As the Landlord has been only partially successful, I dismiss their claim for authority to retain the security deposit.

### Conclusion

The Tenant failed to pay rent and did not file to dispute the Notice to End Tenancy. The Tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy.

The Landlord is granted an Order of Possession.

The Landlord’s claim for monetary compensation for unpaid rent and authority to retain the security deposit is dismissed with leave to reapply.

The Landlord’s claim for authority to retain the Tenant’s security deposit is dismissed with leave to reapply. The Landlord’s claim for recovery of the filing fee is dismissed.

This Decision is final and binding on the parties, except as 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: September 6, 2017

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Residential Tenancy Branch