



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding DHARMA REALM BUDDHIST ASSOCIATION  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, OPC, MNR, MNSD, CNC, CNR, MNDC, OLC, FF

### Introduction

This was a cross-application hearing for Dispute Resolution. The matter was set for a conference call hearing.

The Landlord applied requesting an order possession based on the issuance of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, and the issuance of a 1 Month Notice To End Tenancy For Cause. The Landlord is also seeking a monetary order for unpaid rent and is requesting to keep the security deposit in partial satisfaction of the claim.

The Tenant applied seeking to cancel a 1 Month Notice To End Tenancy For Cause and to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The Tenant is seeking a monetary order for money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The evidence was reviewed and confirmed received by each party. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

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

The Landlord submitted a monetary order worksheet indicating that in addition to unpaid rent, she is seeking \$3,500.00 for repairs and cleaning.

The Tenant applied for a monetary order in the amount of \$7,312.00 for damage to personal property and other claims.

The Tenant testified that she moved out of the rental unit prior to when the Landlord sent registered mail containing the Landlord's evidence. The Landlord testified that she never received any documentary evidence from the Tenant.

An Arbitrator has the discretion to dismiss unrelated claims with or without leave to reapply. Since the primary issue to determine in this hearing is whether or not the tenancy is ending based on the issuance of a 10 Day Notice and a 1 Month Notice, I dismiss the parties monetary claims with leave to reapply. Only the Landlord's request for an order of possession and monetary order for unpaid rent will be considered in this hearing.

#### Issues to be Decided

- Is there cause to end the tenancy?
- Is the Landlords entitled to an order of possession?
- Is the Landlord entitled to a monetary order for unpaid rent?
- Can the Landlord retain the security deposit in partial satisfaction of the claim?

#### Background and Evidence

The parties testified that they entered into a tenancy agreement to begin on March 1, 2017, as a two year fixed term tenancy. Rent in the amount of \$3,500.00 was due to be paid to the Landlord by the first day of each month. A security deposit and pet damage deposit of \$3,500.00 was paid to the Landlord.

#### Landlord's Application

The Landlord testified that the Tenants did not pay the rent owing under the tenancy agreement for July 2017, August 2017, and September 2017.

The Landlord testified that the Tenant owes \$10,500.00 for rent.

The Landlord served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated July 5, 2017. ("the 10 Day Notice") on the Tenant. The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days. The 10 Day Notice also explains the Tenant had five days to dispute the Notice. The Notice states that the Tenant has failed to pay rent in the amount of \$3,500.00.

The Tenant disputed the 10 Day Notice on July 11, 2017. The Tenant testified that she moved out of the rental unit prior to the hearing. She testified that she moved out of the

rental unit during the first week of August 2017. She testified that she still has some of her personal belongings on the rental property and she still has the keys to the rental unit.

The Tenant testified that she had so many concerns with the rental property and Landlord that she decided to move out prior to the hearing.

The Tenant testified that she did not pay the rent owing under the tenancy agreement for July 2017, August 2017, and September 2017.

The Landlord is seeking an order of possession for the rental unit and a monetary order for unpaid rent. The Landlord is seeking to keep the security deposit in partial satisfaction of the claim for unpaid rent.

The Tenant's monetary claim for damage to her personal property and other costs are dismissed with leave to reapply.

### Analysis

Section 26 of the Act states that a Tenant must pay rent when it is due under the tenancy agreement whether or not a Landlord complies with the Act, the Regulations, or the tenancy agreement, unless the Tenant has a right under this Act to deduct all or a portion of the rent.

Despite the issuance of a 1 Month Notice To End Tenancy For Cause, and a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, I find that the tenancy ended when the Tenant moved out of the rental unit prior to the hearing. I grant the Landlord an order of possession for the rental unit.

I find that the Tenant did not pay the rent owing under the tenancy agreement for July 2017; August 2017; and September 2017. I find that the Tenant did not have a right to withhold payment of the rent. If the Tenant had concerns regarding the Landlord's obligations, the appropriate action is to pay the rent and apply for dispute resolution seeking an order for the Landlord to comply with the Act, Regulation or tenancy agreement. The Tenant was not authorized to withhold payment of three months' rent and owes the Landlord \$10,500.00 for unpaid rent.

I order that the Landlord may keep the security deposit and pet damage deposit of \$3,500.00 in partial satisfaction of the claim for unpaid rent. After setting off the deposits of \$3,500.00 towards the amount of rent owing, I find that the Landlord is entitled to a monetary order of \$7,000.00.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Tenant failed to pay the rent owing under the tenancy agreement, I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

I grant the Landlord a monetary order in the amount of \$7,100.00. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

### Conclusion

The Tenant disputed two notices to end tenancy but moved out of the rental unit prior to the hearing. The tenancy ended on the date the Tenant moved out.

The Tenant failed to pay the rent owing under the tenancy agreement and did not have the authority to withhold payment of three months of rent.

The Landlord is granted an order of possession for the rental unit. The Landlord is authorized to keep the security deposit and pet damage deposit of \$3,500.00 in partial satisfaction of the Landlord's claim for unpaid rent.

The Landlord is granted a monetary order in the amount of \$7,100.00.

The Tenant and Landlord have leave to reapply for the monetary claims that were not part of this hearing.

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: September 12, 2017

---

Residential Tenancy Branch