



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

### Dispute Codes:

OPR, CNR, OPC, CNC, MNSD, MND, MNR, MNDC, OLC, FF

### Introduction

This hearing dealt with cross applications.

The Landlord filed an Application for Dispute Resolution, in which the Landlord has made application for an Order of Possession for Unpaid Rent, an Order of Possession for Cause, a monetary Order for unpaid rent, a monetary Order for money owed for compensation for damage or loss, a monetary Order for damage to the rental unit, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

The Tenant filed an Application for Dispute Resolution, in which the Tenant has made application to set aside a Notice to End Tenancy for Unpaid Rent, to set aside a Notice to End Tenancy for Cause, a monetary Order for money owed for compensation for damage or loss, an Order requiring the Landlord to comply with the *Act*, and to recover the filing fee from the Landlord for the cost of this Application for Dispute Resolution.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

### Issue(s) to be Decided

The issues to be decided in relation to the Landlord's Application for Dispute Resolution, are whether the Landlord is entitled to an Order of Possession for unpaid rent; to an Order of Possession for Cause; to a monetary Order for unpaid rent; to a monetary Order for damage to the rental unit that resulted from a fire; and to recover the filing fee from the Tenant for the cost of the Application for Dispute Resolution, pursuant to sections 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

The issues to be decided in relation to the Tenant's Application for Dispute Resolution, are whether the Notice to End Tenancy for Unpaid Rent should be set aside; whether

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the Notice to End Tenancy for Cause should be set aside; whether the Tenant is entitled to compensation because the Landlord attempted to end this tenancy; and whether the Tenant is entitled to recover costs associated to this Application for Dispute Resolution, pursuant to sections 38, 67, and 72 of the *Act*.

## Background and Evidence

The Landlords and the Tenant agreed that the parties entered into a tenancy agreement for the main upper floor of this residence, for which the Tenant is required to pay monthly rent of \$1,600.00. Although the tenancy agreement for this rental unit indicates that the rent is due on the second day of each month, both parties agreed that they had a verbal agreement that the rent was due on the sixth day of each month.

The Landlords and the Tenant agreed that the parties entered into a tenancy agreement for the lower rental unit in this residence, for which the Tenant is required to pay monthly rent of \$900.00. The parties agreed that the rent for this rental unit is due on the first day of each month.

The Landlords stated that a ten (10) day Notice to End Tenancy for Unpaid Rent, which had an effective date of June 20, 2009, was posted on the front door of the rental unit on June 06, 2009. The Notice is dated June 06, 2009. The Notice indicated that the Tenant has failed to pay rent of \$900.00 that was due on June 01, 2009 and \$1,600.00 that was due on June 06, 2009. The Tenant stated that he received that Notice on June 06, 2009.

The Tenant disputed the Notice to End Tenancy for Unpaid Rent on June 08, 2009. The Tenant argued that the Notice is not valid because it was served on the day that the rent was due.

The Landlord and the Tenant agreed that the Tenant still owes \$2,500.00 in rent from June of 2009, for which the Landlord is seeking a monetary Order. This was the reason for serving the 10 Day Notice to End Tenancy for Cause.

The Agent for the Landlord stated that she posted a One Month Notice to End Tenancy for Cause, which had an effective date of June 30, 2009, on the door of the rental unit on May 23, 2009 at approximately 1500 hours. The Notice is dated May 23, 2009. The Notice indicated that the Tenant has caused extraordinary damage to the unit/site. The Tenant stated that he found the Notice to End Tenancy for Cause on his door on May 23, 2009 at approximately 1800 hours.

The One Month Notice to End Tenancy for Cause informed that Tenant that it is presumed that he will be vacating the rental unit by the effective date of the Notice,

unless he files an Application for Dispute Resolution seeking to set aside the Notice within ten days of receiving the Notice. The Tenant disputed the Notice to End Tenancy for Cause on June 08, 2009.

The Landlord and the Tenant agreed that on February 27, 2009 the Tenant was cooking in his rental unit; that he left food cooking on the stove unattended for a short period of time; that the food started to burn, which activated the sprinkler in the rental unit; and that extensive water damage occurred in the residential complex as a result of the incident. This was the reason the Landlord served the One Month Notice to End Tenancy for Cause on May 23, 2009.

The Landlord submitted documentation that establishes that a significant amount of repairs are required to the rental unit. The Landlord also submitted documentation that established they are responsible for paying the deductible portion of their insurance claim for these repairs, in the amount of \$500.00. The Landlord is seeking compensation for the deductible portion of the insurance claim.

The Tenant is claiming \$2,500 in compensation for the humiliation of being served with Notices to End Tenancy.

The Tenant is claiming \$5,000.00 in compensation for punitive damages because he alleges that the Landlord has served the Ten Day Notice to End Tenancy and the One Month Notice to End Tenancy were unlawful attempts to end this tenancy, when the real purpose for ending the tenancy was that the house was sold on May 22, 2009 or May 23, 2009.

The Tenant is claiming \$800.00 in compensation for loss of revenue, as individuals who were boarding with him vacated the premises after learning that the tenancy may end.

The Tenant is claiming compensation, in the amount of \$1,000.00, for "administrative expenses" that include researching the Residential Tenancy Act and typing statements.

## Analysis

The evidence shows that the Tenant entered into a tenancy agreement with the Landlords for two rental units located in the same residential complex. I find that the Tenant was required to pay monthly rent for one of the rental units, in the amount of \$900.00, on the first day of each month and rent of \$1,600.00 for the second rental unit on the sixth day of each month.

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The evidence shows that the Tenant received a Notice to End Tenancy for Unpaid Rent on June 06, 2009, which required the Tenant to vacate both rental units on June 20, 2009, pursuant to section 46 of the *Act*.

Section 46(1) of the *Act* entitles landlords to end a tenancy if rent is unpaid on any day after the rent is due by giving notice to end the tenancy on a date that is not earlier than 10 days after the tenant receives the notice. In the circumstances before me, I find that the Notice to End Tenancy for Unpaid Rent is of no force and effect, as it was served on the Tenant on the day that a portion of the outstanding rent was due. To be valid, the Notice must be served on any day after the rent is due. On this basis, I dismiss the Landlords' application for an Order of Possession for Unpaid Rent and I grant the Tenant's application to set aside the Notice to End Tenancy for Unpaid Rent.

The evidence shows that the Tenant located the Notice to End Tenancy for Cause on the door of his rental unit on May 23, 2009. I therefore find that he was served with this Notice on that date.

Section 47(4) of the *Act* stipulates that a tenant may dispute a Notice to End Tenancy for Cause that is served pursuant to section 47 of the *Act* by making an application for dispute resolution within 10 days after the date the tenant receives the notice. In these circumstances, the Tenant had until June 03, 2009 to dispute the Notice. The evidence shows that he did not dispute the Notice until June 08, 2009.

Section 47(5) of the *Act* directs that if a tenant who has received a Notice to End Tenancy for Cause does not make an application for dispute resolution within ten days of receiving the Notice, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and the tenant must vacate the rental unit by that date. The Tenant did not dispute this Notice within 10 days of the date he received the Notice and there is, therefore, a conclusive presumption that the tenancy will end on the effective date of the Notice which, in these circumstances, is June 30, 2009. On this basis, I dismiss the Tenant's application to set aside the Notice to End Tenancy for Cause and I will be granting the Landlord an Order of Possession for Cause that requires the Tenant to vacate the rental unit on, or before, June 30, 2009.

As there is no dispute that rent for June of 2009, in the amount of \$2,500.00 has not been paid, I find that the Tenant owes this amount to the Landlord.

Section 32(3) of the *Act* stipulates that a tenant must repair damage to the rental unit or common areas that he caused by his actions or by neglect. I find that the water damage that occurred in the rental unit on February 27, 2009 were the direct result of the Tenant's neglect. Specifically, I find that the Tenant was neglectful when he left unattended food cooking on the stove.

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As the Tenant is responsible for the water damage, I find that he is obligated to repair the damage. In these circumstances, I find that he is obligated to pay the deductible portion of the insurance claim, which is \$500.00.

I find that the Landlord acted reasonably when they served the Tenant with a Ten Day Notice to End Tenancy for unpaid rent. Although the Notice was invalid because it was served one day early, the Tenant had not paid the portion of the rent that was due on June 01, 2009 and the Tenant has not yet paid the rent that was due on June 06, 2009. I do not find that the Landlord acted maliciously when serving the Ten Day Notice to End Tenancy, nor do I find that they unreasonably interfered with the Tenant's right to the quiet enjoyment of his rental unit.

I find that the Landlord acted reasonably when they served the Tenant with a One Month Notice to End Tenancy for Cause. Although I did not rule on the merits of the One Month Notice to End Tenancy for Cause due to the conclusive presumption clause outlined in section 47(5) of the Act, the evidence shows that the Tenant did cause extraordinary damage to the rental unit on February 27, 2009. In these circumstances I find it reasonable that the Landlords served the One Month Notice to End Tenancy on May 23, 2009. I do not find that the Landlord acted maliciously when serving the One Month Notice to End Tenancy, nor do I find that they unreasonably interfered with the Tenant's right to the quiet enjoyment of his rental unit.

As the Tenant has not established that the Landlord interfered with his right to the quiet enjoyment of his rental unit or that he has contravened the Act in a manner that constituted harassment, I hereby dismiss the Tenant's application for compensation, in the amount of \$7,500.00 for harassment and his application for compensation, in the amount of \$800.00, for loss of revenue.

I have not considered the Tenant's allegations that the rental unit has been sold, as I find that it has no relevance in this dispute. I note that the Landlord has every right to sell his property and this sale has no impact on the Tenant until such time as the Landlord attempts to end the tenancy. I do not accept the Tenant's argument that the Ten Day Notice to End Tenancy and the One Month Notice to End Tenancy were ruses to end the tenancy because the property had been sold, as the Landlord showed reasonable grounds for serving both notices.

As the tenancy has not yet ended, I hereby dismiss the Tenant's application for the return of his security deposit, with leave to reapply on that issue once the tenancy has ended. I also dismiss the Landlord's application for compensation for a damaged carpet on the staircase, with leave to reapply on that issue if the carpet is not repaired at the end of the tenancy.

As the Act does not permit me to award compensation for costs associated to participating in the dispute resolution proceedings, apart from filing fees, I hereby dismiss the Tenant's application for "administrative expenses".



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As both the Tenant's and the Landlord's applications each have some merit, I find that each party is responsible for their own costs for filing this Application for Dispute Resolution.

## Conclusion

The Landlord has been granted an Order of Possession that is effective at 1:00 p.m. on June 30, 2009. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

I find that the Landlord has established a monetary claim, in the amount of \$3,000.00, which is comprised of \$2,500.00 in unpaid rent and \$500.00 in compensation for the insurance deductible the Landlord's are required to pay to have the water damage repaired. Based on these determinations I grant the Landlord a monetary Order for the balance of \$3,000.00. 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 *Residential Tenancy Act*.

Dated: June 24, 2009.

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Dispute Resolution Officer