



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

### **Dispute Codes:**

OPE, OPR, OPC, OPB, MNR, DRI, CNE, CNC, CNR, MNDC, OLC, ERP, RP, PSF, RPP, LRE, OPT, LAT, RR, SS, O, FF

### **Introduction**

This hearing dealt with cross Applications for Dispute Resolution.

The Landlord is seeking to end the tenancy, based on a one month Notice to End Tenancy and a 10 day Notice to End Tenancy for unpaid rent, claiming the employment of the Tenant has ended, and the Tenant is repeatedly late paying rent, the Tenant has not paid rent when due, and that the Tenant has breached an agreement with the Landlord. The Landlord is also seeking monetary orders in the amount of \$1,892.00 for unpaid rent, to keep the security deposit, and to recover the filing fee for the Application.

The Tenant is seeking to dispute an additional rent increase, to cancel the one month Notice to End Tenancy for end of employment with the Landlord and for cause, and to cancel the 10 day Notice to End Tenancy for unpaid rent. The Tenant is also seeking a monetary order for \$10,000.00 for compensation under the Act or tenancy agreement, orders for the Landlord to comply with the Act and tenancy agreement, to make emergency repairs to the rental unit, to make repairs to the rental unit, to provide services or facilities required by law or the tenancy agreement, to return the Tenant's personal property and to suspend or set conditions on the Landlord's right to enter the rental unit. The Tenant also seeks to obtain orders for possession for the rental unit, to authorize the Tenant to change locks, to allow the Tenant to reduce rent for repairs or services agreed upon but not provided, to serve documents in a different way than required under the Act and to recover the filing fee for the Application.

Both parties appeared, gave 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.

I note both parties submitted evidence late in this matter, which I have reviewed. I have also reviewed all other 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.

I also note that the parties have been involved in several actions before the Supreme Court of British Columbia. The Tenant had started several actions against the Landlord in that forum, however, the Landlord's legal counsel has submitted evidence that the Supreme Court actions initiated by the Tenant have been dismissed as being vexatious.

There is also an unapproved order from the Supreme Court which states that the parties have consented that the issue of the Tenant boarding her horse at the Landlord's stables and the non-payment of boarding fees, as well as the tenancy issues, should be dealt with by the Residential Tenancy Branch.

With all due respect to the Honourable Supreme Court Justice, I must decline to make any determinations regarding the boarding of livestock by the Tenant at the Landlord's property. While the parties might have been able to reach a mutual agreement to resolve their disputes and included such an agreement, negotiation was declined by the parties. I note the authority of a Dispute Resolution Officer derives from the legislation of the Residential Tenancy Act and the Manufactured Home Park Tenancy Act and their respective regulations. Simply put, no Dispute Resolution Officer under the authority of the Director of the Residential Tenancy Branch has jurisdiction to make decisions under the Livestock Lien Act, which is what the parties sought. The parties must attend to the correct legal forum for the Livestock Lien Act portion of this dispute.

#### Issues(s) to be Decided

Is the Landlord entitled to an order of possession for the rental unit and to obtain a monetary order?

Is the Tenant entitled to an order to cancel the Notices to End Tenancy?

Is the Tenant entitled to the other relief sought in her Application?

#### Background and Evidence

Pursuant to the rules of procedure for the Act, the Agent for the Landlord (the "Agent") proceeded first in the hearing and testified as to why the Tenant had been served with the two Notices to End Tenancy.

The Landlord runs a horse stable facility. The Agent testified that the Tenant has lived in the caretaker suite in the stables for several years under different arrangements. The Agent explained there was no written tenancy agreement. She testified that in December of 2009, the parties had an agreement that the rent was to be \$500.00 per month for the suite and in lieu of paying the rent the Tenant would work 50 hours per month at the stables. At this time the Tenant apparently was also working another full time job for a third party not related to the tenancy.

The Agent testified that the cost of boarding the Tenant's horse was a separate issue and that was charged to the Tenant at \$220.00 per month.

The Agent testified that the Tenant had been working in lieu of rent and making these monthly payments until she was injured on or about January 25, 2010, while in the Landlord's stables. The Agent testified that this was basically the last month the Tenant worked fully for the rental unit and this was also the last month board for the horse was paid by the Tenant. The Agent testified that the Tenant was unable to work at her other full time job.

The Agent testified that the Tenant had made one payment to the Landlord of \$608.00 in June of 2010, and this was applied to outstanding rent for the rental unit. The Landlord claims the Tenant owes \$1,892.00 as a balance of rent for the rental unit to from February 2010, to the end of August 2010, excluding June.

The Agent testified that in April of 2010, the Tenant returned to do some light duties for the Landlord, although her work was considered very substandard. The Agent testified that the Tenant was warned several times about her work. After a series of problems, the Landlord determined that the Tenant should be dismissed. The Landlord sent the Tenant an email in late May of 2010 and dismissed her with one month of notice to vacate the rental unit. The Agent also testified that in June of 2010, the Tenant informed the Landlord that she was no longer working for the Landlord.

The relationship between the Landlord and Tenant deteriorated severely following these events. For example, the Landlord has submitted photographic evidence that the Tenant has written graffiti on a wall in the Landlord's place of business concerning the sections of the Act that the Tenant feels the Landlord has breached. The Tenant freely testified that she had written this graffiti on the Landlord's walls, though she denied writing a statement that the Landlord would have to pay her money to resolve their dispute. The Agent also testified that the Tenant has threatened to burn the Landlord's barn down.

The Agent testified that the Landlord has hired a new caretaker to work at the stables, however, this worker is living elsewhere while the Tenant still occupies the rental unit. The Agent expressed some sympathy for the Tenant testifying that the Tenant had explained to her she has mental health problems and her doctors are prescribing and adjusting her medications.

The Landlord's Agent served the Tenant with a one month Notice to End Tenancy on July 7, 2010, although the Agent testified she had wrongly dated the date of her signature as being August 7, 2010. The one month Notice had an effective end date of the tenancy as August 7, 2010. The Tenant testified that she accepted the service of the Notice on July 7, 2010, and understood that the effective date of the Notice indicated the tenancy was to end on August 7, 2010, and that is why she filed to dispute this Notice on July 9, 2010. I note that under section 53 of the Act the effective end date of the Notice was automatically corrected to the last day of the month, being August 31, 2010.

The one month Notice indicates the Landlord's reasons for ending the tenancy is that the Tenant is repeatedly late paying rent and that the rental unit was part of an employment arrangement that has ended and the unit is required for a new employee.

On August 10, 2010, the Landlord's Agent personally served the Tenant with a 10 day Notice to End Tenancy for \$1,892.00 in unpaid rent. The Tenant acknowledged service of this Notice as the Agent stated.

The Tenant then testified as to why she requested an order to cancel the two different Notices to End Tenancy.

The Tenant testified that her occupancy of the rental unit was never a condition of her working for the Landlord. She testified that there had been several different arrangements with the Landlord as to her occupancy of the rental unit. The Tenant testified that the tenancy agreement was that she would pay the Landlord \$400.00 per month for the rental unit and would have a discount of \$100.00 per month to make sure that the lights were turned off in the stables and that it did not burn down.

The Tenant testified that the arrangement for boarding her horse was separate from her tenancy agreement, although the Landlord had changed the boarding amount several times.

The Tenant testified she had paid the Landlord \$608.00 per month for each month of 2010. She testified that in June of 2010 she paid the Landlord \$608.00 by cheque,

however, all other payments had been made in cash to the Landlord. She testified that she had received no receipts from the Landlord for these cash payments.

The Tenant testified that she believes the Landlord owes her for three and a half years of salary. I note the Tenant has apparently begun claims under Employment Standards, Human Rights and the Worker's Compensation Board and I explained to both parties that I have no jurisdiction under the legislation related to those bodies.

The Tenant testified that while the Landlord was supposed to be paying her for her work for the past three years or so, she never asked for payment from the Landlord. The Tenant also testified that the last time she worked for the Landlord was on May 29, 2010, at which time she was fired and told by email that she had one month to leave the rental unit.

The Tenant also testified that during the past three years she had been paying the Landlord \$200.00 to \$500.00 per month to work for the Landlord.

The Tenant testified that the Landlord was not paying her for her work when in fact, she had been paying the Landlord to work for the Landlord. She acknowledged she had made a mistake in never asking the Landlord to be paid for her work in the past three and a half years.

When queried what she was paying the Landlord \$200.00 to \$500.00 a month for, the Tenant testified she was not exactly sure what the money had been paid to the Landlord for.

The Tenant further testified that she wrote the graffiti on the walls of the Landlord's business because the Landlord was attempting to paint the Tenant as a bad person with other people at the stables.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the one month Notice to End Tenancy for the end of the employment and repeated late payment of rent, and the 10 day Notice to End Tenancy for unpaid rent, are both valid and enforceable. I dismiss the Tenant's Application to cancel these Notices.

I accept the evidence of the Landlord that the tenancy agreement required the Tenant to work in exchange for rent of \$500.00 per month. I accept the evidence of both parties that the employment of the Tenant ended at the end of May in 2010.

I find the Tenant has insufficient evidence to prove she paid the Landlord a monthly amount to work for the Landlord. It appears, on a balance of probabilities, it is much more likely the Tenant was paying the Landlord amounts to board her horse, and/or to make up the difference when she did not fulfil her obligation to work for her rent in full. I find that the Tenant's testimony that she failed to ask the Landlord for her salary for three and a half years lacks sufficient credibility.

As the tenancy was part of the employment arrangement, when the employment was terminated the tenancy could be ended by the Landlord with the issuance of the one month Notice to End tenancy.

I further accept that the Tenant, when not working for the Landlord, was required to pay \$500.00 per month for the rental unit. I find that the Tenant has insufficient evidence to prove she worked for the full amount of rent owed, or that she paid the Landlord \$608.00 per month for each month from February to August of 2010, with the exception of one payment of \$608.00 in June of 2010. Therefore, I find the Tenant has been repeatedly late paying rent.

I grant the Landlord an order of possession for the rental unit effective at **1:00 p.m. September 1, 2010**. This order may be registered and enforced in the Supreme Court of British Columbia.

I further find that the Landlord has established a total monetary claim of **\$1,942.00**, comprised of \$1,892.00 in unpaid rent and the \$50.00 filing fee for the Application. I grant and issue the Landlord a monetary order in those terms. As there was no security deposit paid by the Tenant, this portion of the Landlord's claim is dismissed.

As the tenancy is ending, I dismiss the Tenant's requests for orders against the Landlord. I further find the Tenant had insufficient evidence to prove any other portion of her claim and dismiss the Application in its entirety.

### Conclusion

The Tenant's Application is dismissed.

The Landlord is granted an order of possession and a monetary order for unpaid rent.

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: August 31, 2010.

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Dispute Resolution Officer