



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR

### Introduction

This hearing dealt with the landlord's application pursuant to section 55 of the *Residential Tenancy Act* (the *Act*) for an Order of Possession based on the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) of February 2, 2012.

The landlord's February 15, 2012 application for dispute resolution was considered originally by way of a Direct Request Proceeding by a Dispute Resolution Officer (DRO) on February 22, 2012. In this decision, the DRO found that the landlord had established grounds for ending this tenancy on the basis of the 10 Day Notice and issued a 2-day Order of Possession to the landlord.

On February 27, 2012, the tenant applied for review consideration of the decision and order on the basis of fraud. In his application, the tenant asserted that:

- *All notifications of eviction were not received;*
- *All rent for the month of Feb was waved as pour agreement...*  
(as in original)

The DRO considering the Application for Review Consideration considered the tenant's application for review on March 8, 2012. In her decision of that date, the DRO found in part as follows:

*...The tenant has now produced evidence that the rent which was unpaid was waived by the building manager. The tenant has produced a letter from the building manager which states that he has given the tenant "...the month of February free as a rental incentive to sign up for March 1, 2012 because the suite was not carpet cleaned or blinds put up."*

*I find that the application does disclose sufficient evidence of a ground for review and that if the submissions are proven the decision or order of the Dispute Resolution Officer may be varied or set aside.*

*The original decision and orders dated February 22, 2011 are suspended pending a review hearing of this matter...*

At this review hearing, the landlord's representative WO (the landlord) gave sworn testimony, confirmed in writing with his original submission, that he handed the tenant the 10 Day Notice on February 2, 2012. The tenant gave sworn testimony that the landlord did not serve the 10 Day Notice to him and that he first he learned of the landlord's attempt to evict him was when he received a copy of the initial DRO decision and order.

As service of the 10 Day Notice was at issue, I asked the landlord if the person who signed a statement that he/she had witnessed the landlord's service of the 10 Day Notice to the tenant were available to give sworn oral testimony. The landlord first identified the person who witnessed the service of the 10 Day Notice was another of the landlord's employees, CY. Although this name did not appear to match the name provided on the witness statement, I allowed the landlord to attempt to locate CY to provide oral testimony. When the landlord could not locate this person, he changed his sworn testimony to claim that the person who actually witnessed the service of the 10 Day Notice to the tenant at 7:30 p.m. on February 2, 2012 was R. Although this name seemed to align more closely with that provided on the witness statement entered into evidence by the landlord for the original direct request proceeding, the landlord was unable to locate R, as well. I advised the parties that I would need to make a determination of whether the 10 Day Notice was served as part of my decision, as the parties disagreed as to whether the tenant was served with this Notice on February 2, 2012, as alleged by the landlord. At any rate, by at least February 27, 2012, the tenant was aware that the landlord had issued a 10 Day Notice.

The landlord testified that he sent the tenant a copy of his dispute resolution hearing package for the direct request proceeding by registered mail on February 17, 2012. He provided the Canada Post Tracking Number to confirm this mailing. Although the tenant said that he did not initially receive this package, he said that he eventually received this information when he received the initial DRO's decision and order.

#### Issues(s) to be Decided

Should this tenancy end on the basis of the landlord's 10 Day Notice for unpaid rent owing for February 2012? If so, is the landlord entitled to an Order of Possession on the basis of the 10 Day Notice?

#### Background and Evidence

The parties agreed that this one-year fixed term tenancy commenced on February 1, 2012. Monthly rent is set at \$800.00, payable in advance on the first of each month. Although the tenancy agreement calls for the tenant's payment of a \$400.00 security

deposit, the parties agreed that the tenant has not paid this amount. The parties also agreed that the tenant has not paid anything towards the rent for this tenancy thus far.

As part of his application for review consideration, the tenant submitted a February 25, 2012 written statement from GS, the landlord's building manager at the time that this tenancy commenced. This witnessed statement reads as follows:

*I GS previous manager of AB at (Address) gave JJ (the tenant) the month of February free rent as a rental incentive to sign up for March 1/2012 because the suite was not carpet cleaned or blinds put up.*

(anonymized)

The tenant testified that he left a copy of this statement in the mail slot for the landlord at the tenant's building. The landlord denied ever having seen this written statement from the landlord's former building manager. While I accept that the landlord had not received this written statement prior to the hearing, the landlord's former building manager, GS, gave oral testimony at the hearing attesting that the above written statement accurately reflects that he agreed to let the tenant stay in the rental unit during February at no cost due to the condition of the carpet and the lack of blinds.

The landlord testified that the former building manager was the tenant's cousin, an assertion denied by the tenant. The landlord and the landlord's director, who also joined the teleconference near the end of this hearing, maintained that the tenant initially told the landlord's representatives that he had paid cash to the then building manager for February 2012 rent. The landlord's representatives maintained that the tenant later revised his account of why he did not pay February rent when the tenant asserted that the building manager had agreed to let him live in the rental unit rent-free for February due to the condition of the carpet and the lack of blinds. The landlord said that the former building manager, GS, lost his job over this incident and noted that they have taken GS's actions to the police. The landlord and the landlord's director maintained that there was no basis to the tenant's claim that he was permitted to stay in the rental unit rent-free for February 2012, as this is strictly against the landlord's rental policies.

Much oral testimony was heard from the tenant, his female witness who he identified as his fiancé, his witness GS (the landlord's former building manager), the landlord and the landlord's director. The tenant and his witnesses testified that the tenant was given permission by the landlord's then representative, the building manager, to stay in the rental unit at no cost during February 2012. The landlord and the landlord's director maintained that this evidence was a fabrication and claimed that the tenant signed a

residential tenancy agreement on January 31, 2012 with no mention of any rental forgiveness or incentive for February 2012. The tenant said that he did not sign the residential tenancy agreement until February 17, 2012 and that the landlord's representatives had back-dated the agreement to January 31, 2012.

### Analysis

Pursuant to section 63 of the *Act*, the dispute resolution officer may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

Much of this discussion involved whether the tenant was able to pay the undisputed rent amount owing for March 2012 and whether the tenant could also pay the security deposit.

Both parties agreed to settle this dispute on the following terms:

1. Both parties agreed that this tenancy will end by 1:00 p.m. on April 7, 2012, by which time the tenant and anyone on the premises will have vacated the rental property.
2. Both parties agreed that the tenant will not be responsible for paying any rent for February 2012.
3. Both parties agreed that this settlement constituted a final and binding resolution of the issue involving the tenant's non-payment of rent for February 2012, the sole reason for the landlord's application to end this tenancy and obtain an Order of Possession in this application.
4. Both parties agreed that neither party will apply for dispute resolution with respect to matters **currently** in dispute at this time (i.e., the tenant's non-payment of rent for February 2012).

The parties' agreement does not preclude the parties from applying for monetary awards for items that do not involve the unpaid rent for February 2012, the sole monetary issue settled in their agreement.

### Conclusion

To give effect to the settlement reached between the parties, I set aside the February 22, 2011 decision and order that was suspended as a result of the review consideration decision. I issue the attached Order of Possession to be used by the landlord if the tenant does not vacate the rental premises in accordance with their agreement. Should

the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: March 29, 2012

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Residential Tenancy Branch