



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: OPR, MNR, MNSD, FF / CNR

### Introduction

This hearing concerns 2 applications: i) by the landlord for an order of possession for unpaid rent / a monetary order as compensation for unpaid rent / retention of the security deposit / and recovery of the filing fee; and ii) by the tenant for cancellation of a notice to end tenancy for unpaid rent. Both parties participated in the hearing and gave affirmed testimony.

### Issue(s) to be Decided

Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement.

### Background and Evidence

Pursuant to a written tenancy agreement, the month-to-month tenancy began on February 1, 2005. Monthly rent is due and payable in advance on the first day of each month, and it is calculated on the basis of the tenant's "eligibility for rent supplement (subsidy)." A security deposit of \$511.50 was collected on or about January 1, 2005.

The current economic monthly rent for the unit is \$1,050.00. The subsidized amount payable by the tenant was \$191.00; the approval for the tenant's subsidy expired on September 30, 2012. In order to qualify for a continuation of rent subsidy, a tenant must periodically provide proof of current income. The tenant failed to provide such proof after being requested to do so by the landlord in a notice dated September 4, 2012, and again on September 18, 2012 by way of a notation on the bottom of the aforementioned notice. Subsequently, by letter dated September 27, 2012, the landlord advised the tenant that effective October 1, 2012, her monthly rent would be \$1,050.00.

Despite the above notice, the tenant's payment for October's rent was limited to the previously subsidized amount of \$191.00. Thereafter, the landlord issued a 10 day notice to end tenancy for unpaid rent in the amount of \$859.00 (\$1,050.00 - \$191.00). The notice was dated October 3, 2012 and was posted on the tenant's door on that

same date. The tenant filed an application to dispute the notice on October 5, 2012. A copy of the notice was submitted in evidence. The date shown on the notice by when the tenant must vacate the unit is October 13, 2012. Subsequently, the tenant has made no further payment toward rent and she continues to reside in the unit.

The landlord testified that while the tenant provided some limited documentation on October 5, 2012, it was insufficient to establish the tenant's entitlement to the rent subsidy. Further, the landlord stated that the tenancy agreement sets out in detail the particulars related to qualifying for rent subsidy. In this regard I note that clause 9 in the tenancy agreement speaks to "Eligibility for Rent Supplement (Subsidy)" and states, in part that the "requirement to declare and document income is a fundamental and material part of this tenancy agreement."

### Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: [www.rto.gov.bc.ca](http://www.rto.gov.bc.ca)

Based on the documentary evidence and testimony, I find that the tenant was served with a 10 day notice to end tenancy for unpaid rent dated October 3, 2012. While the tenant did not pay the outstanding rent within 5 days of receiving the notice, the tenant filed an application for dispute resolution within 5 days after receiving the notice.

Section 26 of the Act speaks to **Rules about payment and non-payment of rent**, in part as follows:

26(1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this 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.

In the absence of any evidence that the tenant has a right under this Act to deduct all or a portion of the rent, following from all of the above I find that the landlord has established entitlement to an order of possession.

As for the monetary order, I find that the landlord has established entitlement to a claim of \$1,959.00, which is calculated as follows:

\$859.00: *unpaid rent for October*  
\$1,050.00: *unpaid rent for November*

\$50.00: *filing fee*

I order that the landlord retain the security deposit of \$511.50 plus interest of \$18.10 [total: \$529.60], and I grant the landlord a monetary order under section 67 of the Act for the balance owed of \$1,429.40 (\$1,959.00 - \$529.60).

Conclusion

I hereby issue an **order of possession** in favour of the landlord effective **1:00 p.m. Friday, November 30, 2012**. This order must be served on the tenant. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$1,429.40**. Should it be necessary, this order may be served on the tenant, filed in the 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: November 07, 2012.

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Residential Tenancy Branch