



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

**Dispute Codes:** OPR, DRI, CNR, OLC

### **Introduction**

This hearing dealt with applications filed by both the tenant and the landlord pursuant to the *Residential Tenancy Act* for orders as follows:

1. To dispute an additional rent increase;
2. To cancel a Notice to End Tenancy given for unpaid rent; and
3. An Order compelling the landlord to comply with the Act.

The landlord seeks:

1. An Order of Possession.

I accept that the parties were properly served with each other's Application for Dispute Resolution hearing package and evidence.

Both parties appeared and gave evidence under oath.

### **Issue**

Does the landlord have cause to end this tenancy for unpaid rent? Has there been an additional rent increase? Should the landlord be compelled to comply with the Act?

### **Background**

The parties agree that the landlord served a Notice to End Tenancy for unpaid rent on the tenant on January 2, 2013. The landlord testified that the tenant did not pay the rent or file an Application seeking to dispute that Notice within the 5 day time limit as set out in the Notice. Therefore, on January 9, 2013 the landlord filed and served an Application for Dispute Resolution seeking an Order of Possession. The landlord testified that she did receive a money order from the tenant a few days before this hearing paying the full amount of the rental arrears requested in the 10 day Notice however the landlord still wishes to end this tenancy.

The landlord testified that it is a charity that offers subsidized housing to seniors and disabled tenants and that it is exempt from the provisions respecting rent increases as set out in the *Residential Tenancy Act*. The landlord submitted a lease agreement between itself and the tenant showing the rent for this unit is \$845.00 per month. Tenants' rents are based on income and there are yearly reviews of income with a view to determining subsidy eligibility. This tenant's rent is subsidized by the landlord's charitable organization such that in 2012 the tenant's own contribution toward the rent was \$380.00 per month. On November 14, 2012 the landlord wrote to the tenant to advise him that his subsidy application for 2013 had been approved and that his contribution towards his rent would increase by \$45.00 from \$380.00 to \$425.00 for 2013 effective January 1, 2013. The tenant did not pay the new amount when he paid his rent on January 1, 2013 and the landlord served the tenant with the Notice to End Tenancy described above.

The landlord submitted that the history of this tenancy is such that while they are seeking an Order of Possession they are prepared to offer a settlement to the tenant. The landlord submitted that in 2011 the tenant disputed that year's subsidy adjustment and the case came before the Residential Tenancy Branch. In a Decision rendered December 22, 2011 an arbitrator found that the unit is, in fact, exempt from the provisions of Sections 41, 42 and 43 of the *Residential Tenancy Act* dealing with rent increases and the arbitrator therefore declined jurisdiction. The landlord testified that the tenant appealed that Decision to the Supreme Court of British Columbia and the appeal was dismissed. The landlord included copies of both Decisions in evidence.

The landlord testified that defending these claims has been costly to the organization. The landlord testified that they support over 100 seniors and disabled tenants and they need to use all the charitable funds they have to offer these individuals rental subsidies as opposed to spending their monies defending claims made by this tenant. The landlord testified that it is likely that they will have to seek further subsidy adjustments from the other tenants to deal with the legal costs associated with the claims brought by this tenant. The landlord says that they have negotiated an end of tenancy with two other tenants who have also unsuccessfully disputed the rental subsidy adjustments and they are prepared to offer the same settlement terms to this tenant in the hope of ending this tenancy in an amicable fashion. The landlord offered to allow the tenant to stay until the end of May, provided he pays the new rent and to let the tenant move out on short notice if he finds new accommodation before then in which case he would be reimbursed any rents paid should he leave part-way through the month.

The tenant responded that he did not wish to accept the settlement terms. The tenant, through his advocate said the landlord had already made this offer and he has already declined it because he intends to go to Court to seek relief from forfeiture.

The tenant's advocate submitted that the tenant brought the matter to her late and she was aware that the time had run out to dispute the January 2, 2013 Notice to End Tenancy which is the subject of the landlord's application. The advocate confirmed that she and the tenant had discussed the matter and they were aware that the arbitrator would have to allow the landlord's application and issue an Order of Possession today. The advocate stated that the tenant paid the \$45.00 adjustment that was due on January 1, 2013 to settle the matter for the time being so that he can proceed to the next level.

The arbitrator offered the tenant and his advocate time to consider the offer being made by the landlord but the tenant refused. The advocate and the tenant both confirmed that they are not concerned about the Order of Possession they intend to apply to the Supreme Court for relief from forfeiture.

### **Analysis and Findings**

While there is an Application before me filed by the tenant on December 27, 2012 seeking to cancel a Notice to End Tenancy, the Notice to End Tenancy which is the subject of the landlord's application, also before me today, was served on January 2, 2013. There has been no evidence submitted that there was a Notice to End Tenancy served prior to December 27, 2012 but, most importantly, the tenant has agreed that he did not file an Application seeking to cancel the Notice which is the subject of this hearing, that being the Notice served on January 2, 2013.

When a tenant is served with a 10 day Notice to End Tenancy for unpaid rent and the tenant does not pay the rent within the time period required nor file an Application seeking to dispute the Notice pursuant to Section 46 of the *Residential Tenancy Act*, the Act provides that the tenant has been deemed to have accepted the end of the tenancy effective the date set out in the Notice. I therefore find that the landlord is entitled to an Order of Possession as claimed. I will issue the Order of Possession effective 2 days after service on the tenant.

As this tenancy is ending I dismiss the tenant's claim seeking an Order that the landlord comply with the Act.

As this tenancy is ending the tenant's application seeking to dispute an additional rent increase is also dismissed. With respect to this portion of the tenant's claim I note that the tenant has now paid the sum requested. Further, it has already been determined that this tenancy is exempt from the rent increase provisions of the *Residential Tenancy Act* and no further evidence has been presented to show that anything about this tenancy that had made it exempt has changed in which case I would have declined jurisdiction in this regard in any event.

The landlord remains at liberty to make application for a monetary order for rental arrears, compensation or damage.

### **Conclusion**

The landlord is provided with an Order of Possession effective two days after service on the tenants. This is a final and binding Order. Should the tenant fail to comply with this Order the landlord may enforce the Order in 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: January 26, 2013

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Residential Tenancy Branch

