



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

OPR MNR MNDC FF  
MT CNR

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the Landlord and the Tenant.

The Landlord filed on April 30, 2013, seeking an Order of Possession for unpaid rent and a Monetary Order for: unpaid rent and utilities; for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement; for other reasons; and to recover the cost of the filing fee from the Tenant for this application.

The Tenant filed on April 25, 2013, for more time to make his application and to cancel a Notice to end tenancy for unpaid rent.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

### Issue(s) to be Decided

1. Should the 10 Day Notice be cancelled or upheld?
2. If upheld, should the Landlord be granted an Order of Possession?
3. Should the Landlord be awarded a Monetary Order?

### Background and Evidence

The Landlord submitted documentary evidence which included, among other things, copies of: Canada Post receipts; a 10 day notice to end tenancy; proof of service document; and the tenancy agreement. The Tenant did not submit documentary evidence.

The parties entered into a fixed term tenancy agreement that began on January 1, 2011 which switched to a month to month tenancy after December 31, 2011. Rent is payable on the first of each month in the amount of \$1,100.00 and a security deposit of \$100.00 was paid.

The Landlord testified that the Tenant paid \$100.00 towards February 2013 rent and has paid nothing towards March, April, or May 2013 rent. The Landlord confirmed that they are seeking to regain possession of the unit for as soon as possible and to obtain a monetary order for the unpaid rent and filing fee.

The Tenant testified and confirmed that he received the 10 Day Notice on April 19, 2013. He stated he has not paid the past due rent as indicated by the Landlord because he has been waiting for his employment insurance payment.

### Analysis

#### **Landlord's Application**

When a tenant receives a 10 Day Notice to end tenancy for unpaid rent they have (5) days to either pay the rent in full or to make application to dispute the Notice or the tenancy ends.

In this case the Tenant received the 10 Day Notice on April 19, 2013, and the effective date of the Notice is **April 29, 2013**, in accordance with the Act. The Tenant did not pay the rent and he disputed the notice six days after receiving the Notice. The evidence proves the Tenant did not pay the past due rent for February, March, or April 2013; he did not have an Order allowing him to withhold payment of rent; and in the absence of proof to the contrary, he has not complied with the Act which requires a tenant to pay rent in accordance with the tenancy agreement. Therefore, I find the Tenant to be in breach of the Act and I approve the Landlord's request for an Order of Possession.

The Landlord claimed unpaid rent of \$3,200.00 that was due on April 1, 2013 and is comprised of \$1,000.00 owing from February, \$1,100.00 for March, and \$1,100.00 for April 2013. The Tenant failed to pay rent in accordance with the tenancy agreement which is a breach of section 26 of the Act. Accordingly, I award the Landlord a Monetary Award for unpaid rent of **\$3,200.00**.

As noted above this tenancy ended **April 29, 2013**, in accordance with the 10 Day Notice. Therefore I find the Landlord is seeking money for use and occupancy of the unit for May 2013, not rent. The Tenant is still occupying the unit which means the Landlord will not regain possession until after service of the Order of Possession and they will have to work to find replacement tenants. Therefore, I find the Landlord is entitled to use and occupancy and any loss of rent for the entire month of May 2013, in the amount of **\$1,100.00**.

The Landlord has been successful with their application; therefore I award recovery of the **\$50.00** filing fee

Any deposits currently held in trust by the Landlord are to be administered in accordance with Section 38 of the *Residential Tenancy Act*.

### **Tenant's Application**

Based on the foregoing information I have upheld the 10 Day Notice and granted the Landlord an Order of Possession. Therefore, I find the Tenant's requests for more time to make his application and to cancel the 10 Day Notice to have no merit. Accordingly, I dismiss the Tenant's claim, without leave to reapply.

### **Conclusion**

I HEREBY FIND the Landlord is entitled to an Order of Possession effective **Two (2) Days upon service**. This Order is legally binding and must be served upon the Tenant. In the even the Tenant does not comply with this Order it may be filed with BC Supreme Court and enforced as an Order of that Court.

The Landlord has been awarded a Monetary Order in the amount of **\$4,350.00** (\$4,200.00 + \$1,100.00 + \$50.00). This Order is legally binding and must be served upon the Tenant. In the event that the Tenant does not comply with this Order it may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

The Tenant's application is HEREBY DISMISSED in its entirety, without leave to reapply.

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: May 23, 2013

---

Residential Tenancy Branch

