



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPC MND MNR FF  
                             CNC CNR FF

### Preliminary Issues

Residential Tenancy Rules of Procedure, Rule 2.3 states that, in the course of the dispute resolution proceeding, if the arbitrator determines that it is appropriate to do so, he or she may dismiss the unrelated disputes contained in a single application with or without leave to reapply.

Upon review of the Landlord's application, I have determined that I will not deal with all the dispute issues the Landlord has placed on their application. For disputes to be combined on an application they must be related. Not all the claims on this application are sufficiently related to the main issue relating to the Notices to end tenancy. Therefore, I will deal with the Landlord's requests for an Order of Possession and a Monetary Order for unpaid rent and utilities; and I dismiss the Landlord's claim for damages to the unit, site or property, with leave to re-apply.

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by both the Landlords and the Tenants.

The Landlord filed on May 5, 2014, seeking to obtain an Order of Possession for cause and a Monetary Order for unpaid rent or utilities; and to recover the cost of the filing fee from the Tenant for this application.

The Tenant filed on May 5, 2014, seeking an Order to cancel a 10 Day Notice issued for unpaid rent and utilities; to cancel a 1 Month Notice to end tenancy for cause; and to recover the cost of the filing fee from the Landlord for this application.

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 issued May 2, 2014, be upheld or cancelled?
2. If cancelled, should the 1 Month Notice issued April 22, 2014 be upheld or cancelled?
3. If the 10 Day Notice is upheld, did the Landlord make an oral request for an Order of Possession?
4. Has the Landlord proven entitlement to a Monetary Order?

#### Background and Evidence

It was undisputed that the parties executed a written tenancy agreement for a month to month tenancy that commenced on February 2, 2012. The Tenant is required to pay rent of \$1,095.00 plus \$90.00 for utilities on the first of each month and on February 2, 2012, the Tenant paid \$525.00 as the security deposit.

The Landlord testified that on April 22, 2014 he posted a 1 Month Notice to end tenancy for cause to the Tenant's door. When rent was not paid for May 1, 2014, a 10 Day Notice was posted to the Tenant's door on May 2, 2014. The Landlord stated that the Tenant did not pay rent or utilities for May or June so he is seeking an Order of Possession and a Monetary Order for unpaid rent and utilities.

The Tenant testified and confirmed that he received both Notices. He submitted that he has not paid rent or utilities for May or June 2014, because he is attempting to get paid his wages through a claim he has with the labor board. He did not dispute that rent and utilities are owed, he simply stated he does not have the money to pay them.

In closing the Landlord stated that he simply wants his rent money and he wants the Tenant to move.

#### Analysis

Based on the foregoing, the relevant written submissions, and on a balance of probabilities, I find as follows:

#### **Tenant's application**

Upon review of the 10 Day Notice and the 1 Month Notice to End Tenancy, I find the Notices were completed and served upon the Tenant in a manner that complies with the Act.

Section 26 of the Act provides that a tenant must pay rent when it is due in accordance with the tenancy agreement, despite any disputes they may have with their landlord.

In this case, the undisputed evidence confirms that the Tenant did not pay rent or utilities for May or June 2014, and the Tenant still has possession of the rental unit. Accordingly I dismiss the Tenants' application and the 10 Day Notice is upheld.

Section 55 of the Act provides that an Order of Possession must be provided to a landlord if a tenant's request to dispute a Notice to End Tenancy is dismissed and the landlord makes an oral request for an Order of Possession during the scheduled hearing. Accordingly, I grant the Landlord an Order of Possession.

As this tenancy has ended in accordance with the 10 Day Notice, I did not hear evidence relating to the 1 Month Notice.

The Tenant has not succeeded with their application; therefore, I decline to award recovery of the filing fee.

### **Landlord's application**

As noted above, the Landlord has been awarded an Order of Possession relating to the 10 Day Notice. Accordingly, the Landlord's request for an Order of Possession for cause is now moot and no testimony was heard in support of the 1 Month Notice.

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 is deemed to have received the 10 Day Notice on May 5, 2014, three days after it was posted to the door, and the effective date of the Notice is **May 15, 2014**. The Tenant filed to cancel the 10 Day Notice; however, as noted above, his application was dismissed.

The Landlord claimed unpaid rent of \$1,095.00 plus \$90.00 utilities that was due May 1, 2014, in accordance with section 26 of the Act. The undisputed evidence was that rent and utilities remain unpaid. Based on the aforementioned, I award the Landlord May 1, 2014 rent and utilities in the amount of **\$1,185.00**.

As noted above this tenancy ended **May 15, 2014**, in accordance with the 10 Day Notice. Therefore I find the Landlord is seeking money for use and occupancy of the unit and not rent for June 2014.

The Tenant still has possession of the rental unit and the Landlord will not regain possession until service of the Order of Possession. The Landlord will then be required to ready the unit and find new tenants. Therefore, I find the Landlord is entitled to

payment for use and occupancy and utilities for the entire month of June 2014, in the amount of **\$1,185.00**.

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

### Conclusion

I HEREBY DISMISS the Tenant's claim, without leave to reapply.

The Landlord has been granted an Order of Possession effective **Two (2) Days after service upon the Tenant**. 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 Supreme Court and enforced as an Order of that Court.

The Landlord has been awarded a Monetary Order for **\$2,420.00** (\$1,185.00 + \$1,185.00 + \$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.

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: June 23, 2014

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Residential Tenancy Branch

