



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      Landlord: OPR, MNR, MNSD, MNDC, FF  
                                 Tenant: CNQ, CNR, O

### Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord sought an order of possession and a monetary order. The tenant sought to cancel two notices to end tenancy.

The hearing was conducted via teleconference and was attended by the landlord; his agent; and the tenant.

At the outset of the hearing I noted that the tenancy agreements and Notices to end tenancy all named the landlord as "CH" however the tenant's Application for Dispute Resolution names "JF" – the landlord's agent as the landlord. As the party named as landlord in the tenancy agreement is "CH" I amend the tenant's Application to name the correct landlord respondent – "CH".

I also clarified at the outset of the hearing that the rental unit was not subsidized housing and that the tenant did not receive a 2 Month Notice to End Tenancy Because the Tenant Does Not Qualify for Subsidized Rental Unit. Therefore, I amend the tenant's Application to exclude the issue of cancelling a 2 Month Notice to End Tenancy Because the Tenant Does Not Qualify for Subsidized Rental Unit.

While both Applications for Dispute Resolution were submitted to the Residential Tenancy Branch after the issuance of a 10 Day Notice to End Tenancy on July 18, 2014 both parties acknowledge that 2 other 10 Day Notices have been issued: August 5, 2014 and September 2, 2014. The parties agreed to include all 3 Notices at this hearing.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent; to a monetary order for unpaid rent; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 46, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenant is entitled to cancel a 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to Section 46 of the *Act*.

### Background and Evidence

The landlord submitted into evidence the following relevant documents:

- A copy of a tenancy agreement signed by the parties on June 9, 2013 for a 1 year fixed term tenancy beginning on July 1, 2013 that converted to a month to month tenancy on July 1, 2014 for a monthly rent of \$1,435.00 due on the 1<sup>st</sup> of each month with a security deposit of \$700.00 paid;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent issued on July 18, 2014 with an effective vacancy date of July 28, 2014 due to \$1,435.00 in unpaid rent;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent issued on August 5, 2014 with an effective vacancy date of August 15, 2014 due to \$1,435.00 in unpaid rent; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent issued on September 2, 2014 with an effective vacancy date of September 12, 2014 due to \$1,435.00 in unpaid rent.

I note also the landlord submitted 3 previous tenancy agreements between the landlord and the tenant for the same address. The tenant first moved into the rental unit July 1, 2010. Under all tenancy agreements the landlord's agent "JF" has signed on behalf of the landlord.

The tenant submits that she recently found out that the landlord's agent is not a licensed property manager under the Real Estate Services Act. The tenant has provided a copy of a document dated November 28, 2007 entitled "Orders Under Sections 51 and 49 of the Real Estate Services Act. She submits that when she found this out she did not pay her rent for July 2014 because she did not want to be found to be to be complicit in fraudulent activity.

The tenant submits that once she filed her Application for Dispute Resolution she was told by two separate Information Officers at the Residential Tenancy Branch that "everything was on hold until the hearing" and that the flow charts on the website also indicated that everything was on hold and as such did not pay rent for the months of August and September.

The parties both confirm that no rent has been paid for the months of July, August, or September 2014.

## Analysis

Section 26 stipulates that a tenant must pay rent when it is due under the tenancy agreement whether or not the landlord complies with the *Act*, regulation or tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the rent. Some of the reasons the *Act* allows the tenant to not pay rent include: an overpayment of a security deposit; an order from an Arbitrator; or refusal of the landlord to reimburse a tenant for monies paid out for emergency repairs.

While the tenant may have discovered an order against the landlord's agent from a Real Estate body ordering him to cease and desist real conducting real estate services, I note that there is no requirement under the *Act* for a property manager or agent to be licensed by any governing body.

In addition, even if there was a requirement for licensing the orders were made in 2007 and the tenant has provided no evidence that any ban against licensing the landlord's agent was still effective.

Further, the tenant and the landlord's agent have entered into several tenancy agreements since 2010 and the tenant has provided payment to the landlord's agent for the entire duration of all of the tenancies, I am not persuaded by the tenant's position that by paying July 2014 rent she would all of a sudden become complicit with perpetrating fraud.

Finally, regardless of the tenant's reasons for not paying rent for July 2014 I find that the tenant had no authority under the *Act* to withhold rent. I find the tenant took no action such as file an Application for Dispute Resolution to obtain an order that she should not have to pay rent; she simply stopped paying rent.

Section 46 of the *Act* allows a landlord to end a tenancy if rent is unpaid on any day after the day it is due by giving the tenant notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

As I have found above that the tenant had no authority under the *Act* to withhold any rent for the purposes she has indicated I find that the 10 Day Notice to End Tenancy for Unpaid Rent issued by the landlord on July 28, 2014 to be valid and enforceable.

As I have found the Notice issued on July 28, 2014 to be valid and enforceable I find the issues related to the Notices issued on August 5 and September 2, 2014 are moot and I make no other findings in regard to these two notices.

Based on the testimony of both parties I find the tenant has failed to pay rent for the months of July, August and September 2014 and the landlord is entitled to compensation in the amount of \$4,305.00.

Conclusion

Based on the above, I dismiss the tenant's Application for Dispute Resolution in its entirety.

I find the landlord is entitled to an order of possession effective **two days after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$4,355.00** comprised of \$4,305.00 rent owed and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$700.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$3,655.00**.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: October 1, 2014

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Residential Tenancy Branch

