



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes:

CNR

### Introduction

This hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Unpaid Rent.

Both parties were represented at the hearing. They were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

The Tenant stated that on February 20, 2015 the Application for Dispute Resolution and the Notice of Hearing were sent to the Landlord, via registered mail. The Landlord acknowledged receipt of these documents.

On March 02, 2015 the Landlord submitted documents to the Residential Tenancy Branch, which the Landlord wishes to rely upon as evidence. The Landlord stated that these documents were personally served to the Tenant on March 04, 2015. The Tenant acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

### Issue(s) to be Decided

Should the Notice to End Tenancy for Unpaid Rent, served pursuant to section 46 of the *Residential Tenancy Act (Act)*, be set aside?

### Background and Evidence

The Landlord and the Tenant agree that the Tenant is currently required to pay rent of \$550.00 by the first day of each month.

The Landlord and the Tenant agree that rent for September of 2014 has never been paid. The parties agree that in January they met at a Service B.C. office in January in an attempt to obtain funds for the September rent that was due. They agree that the Tenant wanted to leave the Service B.C. office before the matter was resolved and the Landlord offered to pay her \$20.00 to remain in the office. They agree the \$20.00 has not yet been paid.

The Landlord and the Tenant agree that rent was not paid when it was due on February 01, 2015. The parties agree that the Provincial Government paid rent of \$375.00 for February of 2015 on behalf of the Tenant on February 17, 2015, leaving \$175.00 due for that month.

The Landlord and the Tenant agree that the Tenant transferred \$155.00 to the Landlord on February 18, 2015.

The Tenant stated that the Landlord agreed to allow her to reduce her rent for February in compensation for the \$20.00 the Landlord promised to pay her for remaining in the Service BC office. The Landlord #1 stated that he never agreed to reduce her rent by \$20.00 in February as he considered the promise to pay \$20.00 a separate matter and, for record keeping purposes, he did not want it deducted from the rent.

The Tenant stated that they have had "on-going discussions" regarding reducing the rent in exchange for yard work she does at the rental unit. The Tenant stated that they discussed an amount of \$200.00 but acknowledged there has been "no solid agreement". The Landlord #1 stated that there has never been an agreement to reduce the rent in exchange for labour.

The Tenant stated that she believes the Landlord owes her \$200.00 because he used her lumber to repair the deck at the rental unit although he never agreed to compensate her by reducing her rent. The Landlord #1 stated that lumber belonging to the Tenant was not used to repair the deck.

The Landlord#1 stated that a Ten Day Notice to End Tenancy for Unpaid Rent, which had a declared effective date of February 18, 2015, was served to the Tenant, via registered mail, on February 02, 2015. The Tenant stated that she received the Notice to End Tenancy in the mail, although she cannot recall when it was received.

The Landlord and the Tenant agree that rent has been paid for March of 2015. They agree that they did not have a discussion regarding whether this tenancy would continue after rent was paid for February and March, as they understood that would be determined at this hearing.

### Analysis

Section 26 of the *Residential Tenancy Act (Act)* requires tenants to pay rent when it is due 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.

Section 33 of the *Act* authorizes a tenant to withhold rent, in certain circumstances if the tenant has paid for emergency repairs, which are necessary for the health or safety of anyone or for the preservation or use of residential property, and are made for the purpose of repairing:

- (i) major leaks in pipes or the roof,
- (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
- (iii) the primary heating system,
- (iv) damaged or defective locks that give access to a rental unit,
- (v) the electrical systems, or
- (vi) in prescribed circumstances, a rental unit or residential property.

As there is no evidence that the Tenant paid for emergency repairs at the rental unit, I find that she did not have the right to withhold rent in accordance with section 33 of the *Act*.

Section 43(5) of the *Act* authorizes a tenant to withhold rent if a landlord collects a rent increase that does not comply with *Act* or the *Residential Tenancy Regulations*. As there is no evidence that an unlawful rent increase has been imposed, I cannot conclude that she had the right to withhold rent in accordance with section 43(5) of the *Act*.

Section 72(2) of the *Act* authorizes a tenant to withhold rent, if the tenant has authorization from the Residential Tenancy Branch authorizing the Tenant to withhold rent. As there is no evidence that the Tenant has authorization to withhold rent from the Residential Tenancy Branch, I cannot conclude that she had the right to withhold rent in accordance with section 72(2) of the *Act*.

As I am unable to conclude that the Tenant had the right to deduct any portion of the rent in accordance with the *Act*, I find that she remained obligated to pay all of the rent due for September of 2014 and February of 2015. On the basis of the undisputed evidence, I find that the Tenant has paid no rent for September of 2014 and that she still owes \$550.00 in rent for that month. On the basis of the undisputed evidence, I find that the Tenant has only paid \$530.00 in rent for February of 2015 and that she still owes \$20.00 in rent for that month.

In determining this matter I have placed no weight on the undisputed evidence that the Landlord agreed to pay the Tenant \$20.00 for remaining in the Service BC office to discuss rent payments. I find that this agreement does not fall under the jurisdiction of the *Act* and is, in any case, not grounds for withholding rent in accordance with sections 33, 43(5), or 72(2) of the *Act*. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Tenant's testimony that the Landlord agreed to reduce the rent by \$20.00 in February or that refutes the Landlord #1's testimony that the Landlord did not agree to reduce the rent.

In determining this matter I have placed no weight on the Tenant's submission that she and the Landlord were discussing a rent reduction in exchange for yard work. In reaching this conclusion I was heavily influenced by the undisputed evidence that the parties did not agree to a rent reduction in exchange for yard work. As there was no agreement to reduce the rent, the Tenant remained obligated to pay the rent when it was due.

In determining this matter I have placed no weight on the Tenant's submission that the Landlord used her lumber to repair the deck at the rental unit. I find that even if this were true it is not an issue that is governed by the *Act* and is, in any case, not grounds for withholding rent in accordance with sections 33, 43(5), or 72(2) of the *Act*. In reaching this conclusion I was heavily influenced by the absence of evidence that indicates there was ever an agreement to reduce the rent in exchange for the lumber.

Section 46 authorizes a landlord to end a tenancy if rent is not paid when it is due by providing written notice. As the Tenant did not pay all of the rent when it was due by February 01, 2015, including unpaid rent from September, I find that the Landlord had the right to end this tenancy by serving the Tenant with a Ten Day Notice to End Tenancy for Unpaid Rent.

On the basis of the undisputed evidence, I find that the Landlord mailed a Ten Day Notice to End Tenancy to the Tenant on February 02, 2015. Section 90 of the *Act* stipulates that a

document that is served by mail is deemed to be received on the fifth day after it is mailed. As the Tenant cannot recall specifically when she received the Notice to End Tenancy, I find it is deemed received on February 07, 2015.

As the Tenant has been served with a Ten Day Notice to End Tenancy and she has not yet paid all of the rent due for September of 2014 and February of 2015, I find that the Landlord has the right to end this tenancy. I therefore dismiss the Tenant's application to set aside this Notice to End Tenancy and I grant the Landlord an Order of Possession, as was requested by the Landlord at the hearing.

### Conclusion

I grant the Landlord an Order of Possession, as requested at the hearing, pursuant to section 55(1) of the *Act*. As rent has been paid for March of 2014, I find that the Notice to End Tenancy will be effective at 1:00 p.m. on March 31, 2015.

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: March 12, 2015

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Residential Tenancy Branch

