



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding TOP PRODUCERS REALTY LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPC, FF (Landlord's First Application)  
OPR, MNR, MNSD, FF (Landlord's Second Application)  
CNC, MNDC, RP, LRE (Tenant's Application)

### First Hearing (May 6, 2015)

These hearings were convened by conference call to hear the both parties' Applications for Dispute Resolution (the "Application"). The first hearing took place on May 6, 2015 and heard the Landlord's First Application made on April 1, 2015 and the Tenant's Application made on March 25, 2015.

The Landlord applied for an Order of Possession for cause and to recover the filing fee from the Tenant. The Tenant applied for the following issues: to cancel the notice to end tenancy for cause; for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the "Act"), regulation or tenancy agreement; to make repairs to the rental unit; and, to suspend or set conditions on the Landlord's right to enter the rental unit.

During the first hearing, the Landlord's agent explained that they had made a Second Application for an Order of Possession due to unpaid rent which was scheduled to be heard in this hearing. As a result, the parties agreed that the first hearing would be adjourned to allow the Tenant an opportunity to pay rental arrears to the Landlord so that the Landlord could consider the Tenant's request to mutually agree to end the tenancy in this hearing.

An Interim decision dated May 6, 2015 detailed the first hearing and explained that the Tenants' Application and Landlord's First Application were being adjourned and linked to the Landlord's Second Application. It was decided that all matters between the parties would be all heard and decided upon in this hearing. The Interim Decision rendered on May 6, 2015 should be read in conjunction with this decision.

### Second Hearing (May 6, 2015)

The second hearing was attended by the property manager (the “Landlord”) who also acted as the agent for the company Landlord, and an assistant property manager. The Tenant also appeared for the second hearing. The parties provided affirmed testimony during the second hearing.

At the start of the hearing, the parties confirmed receipt of my Interim Decision dated May 6, 2015. The parties also confirmed that the Tenant had not paid rent as had been required after the first hearing. As a result, I continued to hear the parties’ evidence in relation to all three Applications.

### Introduction

The parties were informed of the instructions for the conduct of the proceedings and no questions were raised about the process. The parties were given an opportunity to present evidence and make submissions to me in relation to the evidence provided.

The Landlord’s Second Application made on May 5, 2015 requested an Order of Possession and a Monetary Order for unpaid rent, to keep the Tenant’s security deposit, and to recover the filing fee from the Tenant. The Tenant confirmed receipt of the Landlord’s Second Application by registered mail.

### Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession and a Monetary Order for unpaid rent?
- Is the Landlord entitled to keep the Tenant’s security and pet damage deposits (the “Deposits”) in partial satisfaction of the monetary claim for unpaid rent?
- Is the Tenant entitled to cancel the notice to end tenancy for cause?
- What is to happen to the remainder of the Tenant’s Application?

### Background and Evidence

The parties agreed that this tenancy started on September 1, 2011 on a month to month basis. A written tenancy agreement was completed and provided into written evidence. The Tenant paid the Landlord a \$550.00 security deposit and \$225.00 as a pet damage deposit which the Landlord still retains. Rent under the tenancy agreement is payable by the Tenant in the amount of \$1,100.00 on the first day of each month.

The Landlord testified that the Tenant failed to pay \$200.00 for January, February and March 2015 rent. The Tenant then failed to pay full rent for April 2015. By this date the Tenant was in rental arrears in the amount of \$1,700.00. As a result, the Landlord served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice"). The Landlord posted the Notice on the Tenant's door on April 21, 2015. The Notice shows an expected date of vacancy of May 1, 2015 due to \$1,700.00 in unpaid rent due on April 1, 2015.

The Landlord testified that in the interim time period the Tenant failed to pay rent for May and June 2015 and currently the Tenant is in rental arrears for the amount of \$3,900.00 which the Landlord now seeks to recover from the Tenant. The Landlord requested to amend her Second Application to increase the monetary claim for unpaid rent from \$2,800 to \$3,900.00 as well as an immediate Order of Possession to end the tenancy.

The Tenant confirmed receipt of the Notice on the same day it was posted to her door. The Tenant did not dispute the amount of rental arrears and confirmed that she had not paid the rent as a result of being given an opportunity to do so from the last hearing. The Tenant testified that this was because the third party agency that was going to pay this rent required evidence from the Landlord that this matter was going through dispute resolution. When the Tenant was asked why she did not produce a copy of my Interim Decision to the third party who was going to pay her rent as evidence of the dispute, the Tenant made no comment.

In relation to the Tenant's monetary claim, the Tenant testified that this related to unpaid utilities. The Tenant provided conflicting and confusing evidence in relation to her monetary claim and stated that she had an increased claim and had further evidence related to this and was willing for this matter to be heard at a later time.

### Analysis

Section 26(1) of the Act requires a tenant to pay rent when it is due under a tenancy agreement unless the Tenant has authority to not pay it under the Act. Having examined the Notice, I find that the contents on the approved form complied with the requirements of Section 52 of the Act. I accept the Landlord's undisputed evidence that the Tenant was served with and received the Notice on April 21, 2015.

Sections 46(4) and (5) of the Act states that within five days of a tenant receiving a Notice, a tenant must pay the overdue rent or make an Application to dispute the Notice; if the tenant fails to do either, then they are conclusively presumed to have

accepted the Notice and they must vacate the rental unit on the date to which the Notice relates.

In this case, I accept the Landlord's undisputed evidence that the Tenant has failed to pay the outstanding rental arrears in the amount of \$3,900.00. The Tenant failed to pay rent as required by the Notice and also failed to pay rent after being given an opportunity to do so by the Landlord during the previous hearing. A Landlord should not be without rent based on a collapse of an agreement between the Tenant and a third party to pay rent to the Landlord. Neither does this form authority under the Act to not pay rent under a tenancy agreement.

Based on the foregoing, I find that the Landlord is entitled to an Order of Possession to end the tenancy for unpaid rent. As the vacancy date on the Notice has now passed, the Order of Possession is effective two days after service on the Tenant. This order must be served to the Tenant and may then be filed and enforced in the Supreme Court of British Columbia as an order of that court. As the tenancy has ended under the Notice relating to unpaid rent, the notice to end tenancy for cause which formed part of the Landlord's First Application is now a moot issue and is dismissed.

In relation to the Landlord's monetary claim in the Second Application, the Tenant did not dispute the amount of rental arrears that had accumulated to date. Therefore, pursuant to Section 64(3)(c) of the Act, I allowed the Landlord to amend her Application to increase the monetary claim to **\$3,900.00**. Accordingly, I award the Landlord this amount in rental arrears.

As the Landlord has been successful in obtaining an Order of Possession and provided an opportunity for the Tenant to pay rent from the first hearing, I award the Landlord the filing fee which was paid for both Applications in the amount of \$100.00 pursuant to Section 72(1) of the Act. Therefore, the total amount payable by the Tenant to the Landlord is **\$4,000.00**.

As the Landlord already holds **\$775.00** of the Tenant's Deposits, I order the Landlord to retain this amount in partial satisfaction of the claim awarded. As a result, the Landlord is issued with a Monetary Order for the outstanding balance of **\$3,225.00**. This order must be served on the Tenant and may then be enforced in the Provincial Court (Small Claims) as an order of that court if the Tenant fails to make payment.

In relation to the Tenant's Application, as the Landlord has been granted an Order of Possession to end the tenancy due to unpaid rent, the Tenant's Application to cancel the notice to end tenancy for cause is now a moot issue and is accordingly dismissed.

As the tenancy has now ended the Tenant's Application to suspend or set conditions on the Landlord's entry to the rental unit and for the Landlord to make repairs to the rental unit are also moot issues and are hereby dismissed.

In relation to the Tenant's monetary claim, Section 2.3 of the Residential Tenancy Branch Rules of Procedures state that, in the course of the dispute resolution proceeding, if the Arbitrator determines that it is appropriate to do so, they may dismiss or adjourn any unrelated disputes contained in a single Application. Therefore, as the Tenant was not in a position to fully explain the extent of her monetary claim and it was unrelated to the Applications which were to do with unpaid rent, I decided to dismiss the Tenant's monetary claim but provide her leave to re-apply.

### Conclusion

The Tenant has breached the Act by failing to pay rent under the tenancy agreement. As a result, the Landlord is granted an Order of Possession effective two days after service on the Tenant. The Landlord is allowed to keep the Tenant's security deposit and is issued with a Monetary Order for the remaining balance of \$3,225.00.

The Landlord is granted both filing fees. The Landlord's Application for an Order of Possession based on cause is dismissed. The Tenant's Application is dismissed without leave to re-apply apart from her monetary claim which she is at liberty to re-apply for.

Copies of the above orders are attached to the Landlord's copy of this decision.

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 06, 2015

---

Residential Tenancy Branch

