



## Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

### DECISION

Dispute Codes            CNR, DRI, ERP; OPR

#### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent, dated April 30, 2015 ("10 Day Notice"), pursuant to section 46;
- an order regarding a disputed additional rent increase, pursuant to section 43;
- an order requiring the landlord to make emergency repairs to the rental unit for health or safety reasons, pursuant to section 33.

The landlord's agent, RS ("landlord") and the tenant attended the hearing and were each given a full opportunity to be heard, to present their sworn testimony, to make submissions, and to call witnesses. The landlord's agent confirmed that she had authority to speak on behalf of the landlord at this hearing. The landlord provided a signed authorization letter to this effect, with her Application. "Witness RL" testified on behalf of the tenant at this hearing.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package and the tenant confirmed receipt of the landlord's written evidence package. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application and the tenant was duly served with the landlord's written evidence package.

The tenant confirmed receipt of the landlord's 10 Day Notice on May 3, 2015, by way of posting to her rental unit door, which the landlord claimed occurred on April 30, 2015. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the landlord's 10 Day Notice.

During the hearing, the tenant withdrew her application for an order requiring the landlord to perform emergency repairs, as the smoke detector issue had been resolved by the landlord. Accordingly, this portion of the tenant's application is withdrawn.

During the hearing, the landlord made a verbal request for an order of possession if the tenant's application was dismissed.

### Issues to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Did the landlord illegally increase the tenant's rent for this rental unit?

### Background and Evidence

The landlord testified that this tenancy began on November 22, 2014. Both parties agreed that a security deposit of \$250.00 was paid by the tenant and the landlord returned \$200.00 from this deposit to the tenant on April 30, 2015. Both parties agreed that the landlord continues to retain \$50.00 from the tenant's security deposit. The tenant continues to reside in the rental unit. A written tenancy agreement was provided for this hearing.

The landlord testified that monthly rent in the amount of \$650.00 is payable on the first day of each month. The tenant stated that monthly rent was initially \$550.00 when she moved into the rental unit on November 22, 2014 and that an original tenancy agreement was signed to this effect approximately two weeks prior to November 22, 2014. The tenant did not provide a copy of this original tenancy agreement and witness RL indicated that it was destroyed. The tenant provided a copy of a rent receipt, dated November 22, 2014, signed by the landlord and indicating that rent from November 22 to December 22, 2014 was paid by the tenant in the amount of \$550.00.

The tenant stated that as of December 22, 2014, the second month of her tenancy, the landlord illegally increased the rent by \$100.00 to a total of \$650.00 due per month. The tenant provided copies of rent receipts indicating that she paid \$650.00 per month from December 2014 until May 2015, totalling \$600.00 in overpayment. The tenant seeks a refund of the \$600.00 that she overpaid to the landlord. The tenant stated that she signed a new tenancy agreement on November 22, 2014, indicating that \$650.00 was due for monthly rent, because she was afraid that the landlord would evict her. The tenant stated that she did not know that the landlord could not increase her rent by \$100.00 during the second month of her tenancy, when she attended at the Residential Tenancy Branch ("RTB") to file her application. The tenant seeks a declaration that the landlord illegally increased the rent and that the rent for this rental unit should be \$550.00 per month, not \$650.00.

Witness RL testified that he heard the initial conversation between the tenant and landlord when the tenancy agreement was signed, that the landlord indicated that it was \$550.00 per month and that he gave this amount to the tenant to pay rent for November 2014. Witness RL also stated that the landlord only requested \$250.00 for a security deposit, not \$325.00 as she would be entitled to if the rent was \$650.00, another indication that rent was supposed to be \$550.00 per month.

The landlord indicated that the tenant underpaid rent by \$100.00 for November 2014 and that she did not realize that the landlord could claim for this amount on the 10 Day Notice. The

landlord stated that the tenancy agreement demonstrates that the tenant agreed to pay rent of \$650.00 each month and that there was no original tenancy agreement indicating that rent was ever \$550.00 per month during this tenancy.

The landlord issued the 10 Day Notice for unpaid rent of \$170.00 due on April 22, 2015. The notice indicates an effective move-out date of May 15, 2015. Both parties agreed that the tenant paid rent of \$480.00 on April 24, 2015 and that the remaining amount due was \$170.00. Both parties agreed that the tenant paid \$170.00 to the landlord on May 8, 2015. The tenant stated that she paid the amount indicated on the 10 Day Notice within 5 days of receiving the notice on May 3, 2015, and that the notice should therefore be cancelled.

Both parties agreed that the landlord served the tenant with a 1 Month Notice to End Tenancy for Cause, dated May 9, 2015, with an effective move-out date of June 21, 2015 ("1 Month Notice"). Neither party provided a copy of this notice for this hearing, as it had not been issued at the time of the tenant's application.

### Analysis

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

Both parties agreed to the following final and binding settlement of all issues currently under dispute at this time:

1. Both parties agreed that this tenancy will end by 1:00 p.m. on July 22, 2015, by which time the tenant and any other occupants will have vacated the rental unit;
2. The landlord agreed that rent has been paid in full by the tenant until the end of this tenancy on July 22, 2015;
3. The landlord agreed to withdraw the landlord's 10 Day Notice, dated April 30, 2015, as well as the landlord's 1 Month Notice, dated May 9, 2015;
4. Both parties agreed that this settlement agreement constitutes a final and binding resolution of the tenant's application at this hearing;
5. Both parties agreed that the remainder of the tenant's security deposit in the amount of \$50.00 will be dealt with at the end of this tenancy in accordance with section 38 of the *Act*.

These particulars comprise the full and final settlement of all aspects of this dispute for both parties. Both parties gave verbal sworn affirmation at the hearing that they understood and agreed to the above terms, free of any duress or coercion. Both parties confirmed that they understood that this agreement is legal, final, binding and enforceable, which settles all aspects of this dispute.

## Conclusion

To give effect to the settlement reached between the parties, and as advised to both parties during the hearing, I issue the attached Order of Possession to be used by the landlord **only** if the tenant and any other occupants on the premises fail to vacate the rental premises by 1:00 p.m. on July 22, 2015. The landlord is provided with this Order in the above terms and the tenant must be served with this Order in the event that the tenant and any other occupants do not vacate the premises by 1:00 p.m. on July 22, 2015. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The landlord's 10 Day Notice, dated April 30, 2015, and the landlord's 1 Month Notice, dated May 9, 2015, are cancelled and of no force or effect.

The remainder of the tenant's security deposit in the amount of \$50.00 will be dealt with at the end of this tenancy in accordance with section 38 of the *Act*.

The tenant's application for an order to the landlord to perform emergency repairs for health or safety reasons, is withdrawn.

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 22, 2015

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Residential Tenancy Branch