



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** CNR OPR MNR MND MNSD FF

### **Introduction**

This hearing was convened in response to applications by both parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlord requested:

- an Order of Possession for non-payment of rent and/or damages pursuant to section 55;
- a monetary order for unpaid rent and/or utilities pursuant to section 67;
- authorization to retain all or a portion of the tenant’s security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The tenant requested:

- cancellation of the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The landlord confirmed receipt of the tenant’s application for dispute resolution hearing package (“Application”). In accordance with section 89 of the *Act*, I find the landlord duly served with the tenant’s Application.

### **Preliminary Issue – Landlords’ Service of the Application for Dispute Resolution**

The landlord gave sworn testimony that he served the landlord’s Application for Dispute Resolution Hearing Package (“Application”) on December 7, 2016 at 7:30 p.m., by hand delivering the Application to the co-tenant, the mother of the tenant’s ex-common law partner. The landlord testified that his father was present to witness the service of the hearing package.

The tenant testified that the Application was served to someone she did not consider a co-tenant, as that person no longer has contact with her. The tenant did admit she got a text

message from the landlord on December 7, 2016 at 8:07 p.m. in regards to the Application. The tenant testified that the landlord served someone who does not live with her.

The landlord replied that he did try to serve the tenant directly, but she was not home. As such he left it with another adult at the address the tenant resides at, and as that person's name is on the tenancy agreement and an adult, he considered it a proper form of service. He clarified that the rental suite was a single house with separate suites that connect through a laundry room. He asserted that he rented the home as one unit, not two.

The tenant replied that the rental unit is actually two separate residences with herself living in one suite, and her ex-common law partner and his family in the other. The landlord disputed this saying that the tenancy agreement named all the parties on the same agreement, and one residence, where all the parties reside at. The tenant testified that she never received a copy of the tenancy agreement, and believes the other names were added later.

### **Analysis**

Section 89 of the *Act* describes how an application for dispute resolution must be served.

#### ***Special rules for certain documents***

**89** (1) *An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:*

- (a) by leaving a copy with the person;*
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;*
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;*
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;*
- (e) as ordered by the director under section 71 (1) [director's orders: delivery and service of documents].*

*(2) An application by a landlord under section 55 [order of possession for the landlord], 56 [application for order ending tenancy early] or 56.1 [order of possession: tenancy frustrated] must be given to the tenant in one of the following ways... (c) by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant..*

In this case the landlord served the tenant by way of leaving it with another adult residing at the rental address. Although the tenant disputes the fact that this adult is not a co-tenant, the recipient does reside at the same address as the tenant, and they are both named on the same written tenancy agreement. Regardless of the validity of the written tenancy agreement, it is not disputed that the recipient is an adult living at the same residence, as required by the *Act*.

On a balance of probabilities, I find that the tenant was served with the landlord's Application at the address at which she resides, as required by section 89 (2)(c) of the *Act*. I do, however, note that the service of the application does not comply with section 89 (1) of the *Act*, and as such I can only deal with the landlord's application for an Order of Possession, and I dismiss, with leave to re-apply, all aspect of the landlord's application for a monetary award.

### **Preliminary Issue – Tenant's Late Evidence**

The tenant submitted evidence as part of her application, but this evidence was not received by the Residential Tenancy Branch (the RTB) until December 14, 2016. The tenant admitted that the evidence was submitted late, but she testified that she had to wait for court documents, as well as a police report. She also testified that she was sick. She submitted that she felt her evidence is important as it contained her copy of the tenancy agreement, which should be considered material evidence.

The landlord testified that he wanted this evidence excluded as it was late, and he believed that the evidence was not material to this hearing.

Rule 3.14 of the RTB's Rules of Procedure establishes that a respondent must receive evidence from the applicant not less than 14 days before the hearing. The definition section of the Rules contains the following definition:

In the calculation of time expressed as clear days, weeks, months or years, or as "at least" or "not less than" a number of days weeks, months or years, the first and last days must be excluded.

In accordance with rule 3.14 and the definition of days, the last day for the tenant to file and serve evidence as part of their application was December 7, 2016.

This evidence was not served within the timelines prescribed by rule 3.14 of the Rules. Where late evidence is submitted, I must apply rule 3.17 of the Rules. Rule 3.17 sets out that I may admit late evidence where it does not unreasonably prejudice one party. Further, a party to a dispute resolution hearing is entitled to know the case against him/her and must have a proper opportunity to respond to that case.

In this case, the landlord acknowledged that he had received the tenant's evidence, and he did not testify to how the admittance of this late evidence would be prejudicial to him. On this basis I find that there is no undue prejudice by admitting the tenant's evidence in spite of its late service. Thus I exercise my discretion to admit this late-served evidence.

### **Issue(s) to be Decided**

Should the landlord's 10 Day Notice be cancelled pursuant to section 46 of the *Act*? If not, then is the landlord entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

### **Background and Evidence**

The landlord testified regarding the following facts. This tenancy began on October 1, 2016 as a one year fixed term tenancy. The landlord submitted a copy of this tenancy agreement signed on September 19, 2016 by the tenant, himself, and a third party. The third signature is not dated, but appears underneath three names: RP, LP, and DP.

The tenant submitted her own copy of the tenancy agreement, with differing signatures than the landlord's. The tenant's copy is signed by the landlord on September 19, 2016, by her (on the line underneath the names RP, LP, and DP), and by a third party next to the landlord's spouse's name. The typed names are identical to the landlord's copy, and only the landlord's signature is dated.

The details are identical on both the tenant's and landlord's copy of the tenancy agreements, including the typed names on page 1, indicating two landlords, and four tenants.

Monthly rent in the amount of \$3,000.00 is payable on the first day of each month. A security deposit of \$1,500.00 and a pet deposit of \$750.00 were paid by the tenant, and the landlord continues to retain these deposits.

The landlord testified that all four tenants continue to reside in the rental unit, although the tenant disputes that this is one tenancy. The tenant testified that she lives alone in one part of the rental unit, while her ex-common law partner lives with his family in the other. The landlord testified that the home is a single house with connected suites through the laundry room, and it is the tenants who chose to separate themselves. He submits that the home is rented out as one rental unit, as per the rental agreement.

The landlord submitted that he met with the tenant on September 19, 2016 to sign the tenancy agreement, and the tenant did not request a separate lease. He testified that the tenant was in a common law relationship with one of the other tenants at the time, and they both signed the agreement. The deposits on that same date were given by the tenant to the landlord, and the tenancy was to begin October 1, 2016.

The landlord testified that the upstairs was vacant first, 2 weeks before the tenancy was to begin, and a week later the basement became available. As such he provided access accordingly, and earlier than planned, but at different times. On approximately October 24, 2016, the landlord received a phone call from the common law partner that he was no longer in a relationship with the tenant, and that he would be living downstairs with his mother. The landlord was not too concerned, as to how the tenants divided the rental was something to be discussed amongst themselves, and it was their decision.

On November 1, 2016 a dispute occurred between the tenant and her ex-common law partner in regards to who was to pay the \$3,000.00 rent. The tenant agreed to pay \$900.00 and the rest was to be received from the ex-common law partner by November 4 or 5, 2016. No further monies were paid, and the landlord subsequently issued the 10 Day Notice on November 8,

2016 indicating an effective move-out date of November 18, 2016. The tenant did not dispute receiving this notice, which was personally served to her on November 8, 2016.

The notice stated that the tenant failed to pay rent and utilities as follows: \$2,100.00 by November 1, 2016.

The landlord testified that this was the first time he has heard the tenant requesting two separate leases, and the landlord responded that the tenant either deal with the 10 Day Notice or pay the rent. The landlord submits that no rent was paid after the 10 Day Notice was served.

On November 13, 2016, the tenant notified the landlord that she was filing an application to dispute the 10 Day Notice, which was filed on November 14, 2016. The landlord had no issue with the service of the tenant's dispute application.

On November 28, 2016, the tenant sent \$800.00 to the landlord by e-transfer to pay some of the outstanding rent. The landlord testified that although \$2,100.00 was the outstanding amount, the tenant would only agree to pay \$800.00. This left \$1,300.00 outstanding for the month of November 2016.

On November 30, 2016, the landlord met with the tenant's ex-common law partner, who gave him a cheque in the amount of \$1,700.00 for the December 2016 rent. The landlord informed him that the \$1,700.00 would be applied to the outstanding November rent first, and the remaining \$400.00 would be applied to the December rent. The landlord testified that \$2,600.00 was still outstanding for the month of December, and that this payment was for use and occupancy only, and he was still seeking an Order of Possession for unpaid rent.

The tenant disputes the validity of the written tenancy agreement, and testified that she can no longer count on her ex-common law partner. She submitted that the fact that the two parties moved in on different dates supports her argument that this was in fact two tenancies, and not one. She also emphasized how the home was divided into two separate suites. The tenant is applying to cancel the landlord's 10 Day Notice as she has a non-relationship with the other tenants, and she paid her portion of the \$3,000.00 rent. She submitted that the other tenants still owed her money, and that she should not be required to pay \$3,000.00 a month. She believed that what she had paid is fair as the relationship has dissolved between herself and her ex-common law partner and his family. She submitted that she had given her ex-common law partner money for the December 2016 rent, and that he was to pay for his own share. She also submitted that she pays the utilities for the entire house, and has paid more than her fair share of rent.

The landlord responded that he highlighted every part of the tenancy agreement before both parties had signed, and that it is not up to the landlord to chase every tenant for the rent, which is clearly stated on the agreement to be \$3,000.00 per month. The landlord emphasized that the rent was not paid in full, nor was it paid on time.

The tenant provided further testimony that on November 30, 2016 the landlord signed a separate written tenancy agreement for her ex-common law partner. The landlord disputed this, stating that the form was for the purposes of income assistance, and not a separate rental agreement.

## **Analysis**

**Section 26** of the Act, in part, states as follows:

### **Rules about payment and non-payment of rent**

**26** (1) A tenant must pay rent when it is due under the tenancy agreement, 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.

Based on the testimony of the landlord and the tenant and their supporting documents respecting matters of rent, I find that the tenant was served with a notice to end tenancy for non-payment of rent and I find the notice to be valid.

Based on the testimony of both parties and the evidence before me, I find the written tenancy agreement to be valid despite some variances in both copies provided to me. Both copies clearly list the tenants in the tenancy, and both copies are signed by the tenant and the landlord. Both copies also clearly state that the monthly rent due per month is \$3,000.00 and is to be paid on the first day of each month.

The tenant testified that the home contained two suites, and that both she and her ex-common law partner had moved in on different dates. The written tenancy agreement clearly states that the landlord rented the entire home as one tenancy. The separation of suites or living arrangements within the rental does not invalidate the tenancy agreement. Move-in dates are also an arrangement amongst parties. The existence of two separate move-in dates is not determinative of whether this was in fact one or two tenancies.

I also note the fact that the tenant was in an existing common law relationship with one of the other tenants at the time tenancy agreement was signed. This relationship dissolved in October 2016, sometime after the tenancy had begun. The onus is not on the landlord to accommodate dissolution of relationships between his tenants, and tenants do not have the right under the *Act* to deduct or withhold rent, or interpret or change the terms of a written tenancy agreement, unless mutually agreed to by both the landlord and the tenant.

The tenant has not paid the outstanding rent and despite having applied for dispute resolution to dispute the notice to end tenancy, the tenant has only confirmed that a portion of the rent has not been paid to the landlord. The tenant signatories to the tenancy agreement do not have a right under the *Act* to deduct or withhold rent. Therefore the tenant's application to cancel the landlord's Notice to End for unpaid rent **is hereby dismissed** without leave to reapply. I find that this tenancy ended on November 18, 2016, the date indicated on the 10 day Notice.

As the tenancy has now come to an end, I find that the landlord is entitled to an **Order of Possession**.

**Conclusion**

The tenant's application to cancel a Notice to End tenancy for unpaid rent **is dismissed**.

The landlord's application, in part, is allowed. I find that the landlord's 10 day Notice is valid and effective as of November 18, 2016.

I grant an Order of Possession to the landlord effective two **days after service of this Order** on the tenant. Should the tenant and any occupant of this original rental agreement 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 application for monetary compensation for unpaid rent and/or damages, to keep part or all of the security deposit, and to recover the filing fee, is **dismissed with leave to reapply**.

**This Decision is final and binding on both parties.**

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: January 23, 2017

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Residential Tenancy Branch