



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding RED DOOR HOUSING SOCIETY  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes                      OPR, CNR, MNDC, OLC, FF

### Introduction

This hearing considered cross-applications pursuant to the *Residential Tenancy Act* (the “*Act*”).

The tenant seeks

- cancellation of the landlords’ 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) pursuant to section 46;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlords to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- recovery of the filing fee for this application from the landlords pursuant to section 72.

The landlords seek:

- an Order of Possession for unpaid rent pursuant to section 55.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The personal landlord confirmed she represented all of the named landlords (the “landlord”).

Initially, I was scheduled to hear only the tenant’s application today but the landlords made a request that their matter be heard together. Pursuant to Rules of Procedure 2.10, as the applications pertain to the same residential property, involve the same parties, seek similar relief and would require me to consider the same facts I brought the matters together so that both could be heard at once. The landlords’ application was originally scheduled to be heard by me on April 13, 2017.

As both parties were in attendance I confirmed that there were no issues with service of the landlords’ 10 Day Notice, the tenant’s application for dispute resolution, the landlords’ application for dispute resolution or either party’s evidentiary materials. The parties confirmed receipt of one another’s materials. In accordance with sections 88 and 89 of the *Act*, I find that the parties were duly served with copies of the landlords’ 10 Day Notice, the respective applications and their respective evidence materials.

Issue(s) to be Decided

Should the landlords' 10 Day Notice be cancelled? If not are the landlords entitled to an Order of Possession for unpaid rent?

Is the tenant entitled to a monetary award as requested?

Should the tenant be ordered to comply with the Act, regulation or tenancy agreement?

Is the tenant entitled to recovery of the filing fee from the landlords?

Background and Evidence

This residential tenancy is for a rent geared to income (RGI) unit operated by the corporate landlord. Tenants are required to submit documentation to support their eligibility and determine the monthly rent amount. The tenant has resided in the rental unit for a number of years with her children. In October of 2016 the tenant advised the landlord that she intended for her husband to move in to the rental unit. The addition of an individual to a tenancy agreement would trigger a new calculation of monthly rent for the rental unit.

The tenant testified that while she advised the landlord of her intention and her husband began to have some overnight stays, he has not yet moved in as she is awaiting approval from the landlord. She said that because of this she believes the monthly rent should remain at the single rate. The tenant further testified that she believes the single rent rate of \$225.00 is a miscalculation and the correct monthly rent should have been \$210.00. The tenant argues that because of the discrepancy there has been an overpayment and she is owed \$325.00 from the landlord.

The landlord testified that the tenant's husband began residing in the rental unit in October, 2016. The landlord said that upon discovering the additional individual residing in the rental unit the landlord requested the tenant submit financial information in order to determine if the family would continue to qualify for the rental unit. The landlord testified that the tenant provided the financial information and the rent was calculated to be \$1,176.00 monthly. The landlord said that the tenant and her husband signed a new tenancy agreement on December 16, 2016. Because the landlord understood the tenant's husband began residing in the rental unit in October the rent of \$1,176.00 was retroactively applied from October onwards.

The tenant confirmed that on December 16, 2016 she and her husband signed a new tenancy agreement with the landlord. However, the tenant argued that the tenancy agreement is invalid as it did not specify the date on which the tenancy starts. She also argued that the landlord did not return the security deposit from the earlier tenancy, instead carrying over the amount into the new tenancy. The tenant further disagrees with the landlord's calculation of the monthly rent and said that the rent should be \$1,078.00 monthly based on the family income.

The landlord testified that the tenant has been advised both verbally and in writing about the new monthly rent rate and when the rent took effect. The landlord submitted into evidence

copies of correspondence with the tenant where the parties discuss the rent amount. The landlord testified that based on the monthly rent of \$1,078.00 the tenancy is in arrears by \$5,931.00 as of March 27, 2017 the date of the hearing. The landlord testified that the tenant has failed to make any payment for March, 2017 rent. The tenant testified that she has not paid the March rent as it became due after receiving the 10 Day Notice.

The tenant disputes that the monthly rent is \$1,176.00 and argues that the rent is in fact \$210.00. She has testified that the landlord has deducted the amount of \$225.00 monthly in error. She also said that the rent amount for the family unit should be \$1,078.00 based on the tenant's family income. The tenant said that the tenancy agreement signed on December 16, 2016 should be invalid as it contains a number of deficiencies.

### Analysis

In accordance with subsection 46(4) of the *Act*, the tenant must either pay the overdue rent or file an application for dispute resolution within five days of receiving the 10 Day Notice. Where a tenant applies to dispute a 10 Day Notice, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the 10 Day Notice is based. In the present case, the landlord testified that there was a rent arrear of \$4,755.00 at the time the 10 Day Notice was issued, based on a monthly rent of \$1,176.00 from October, 2016 onwards.

I find that the agreement signed by the parties on December 16, 2016 is a valid tenancy agreement. I find that, given the nature of the RGI tenancy, the parties were aware that the monthly rent would be calculated based on the financial information submitted by the tenant. I also find that the tenant was advised as to the date the tenancy would start in numerous pieces of correspondence from the landlords. I do not find the tenant's argument that the agreement is invalid because the security deposit was carried over from an earlier agreement to be persuasive.

I found the tenant's evidence and arguments to be inconsistent. I find that the tenant was aware of her obligations under the new tenancy agreement. The landlord submitted into written evidence several letters written by the tenant where she confirms that her husband resides in the rental unit. The tenant disputed that her husband resides in the rental unit but did not provide evidence of another residence. The landlord testified that they were unaware of any other residence and that the husband received mail and documents at the rental unit.

I find, based on the evidence of the parties, that there was a new tenancy agreement signed on December 16, 2016. I accept the evidence of the landlords that the rental amount was calculated based on the financial information provided by the tenant. I accept the landlord's evidence that the rental amount was calculated to be \$1,176.00. I accept that the tenant failed to pay this amount and there is a rent arrear of \$5,931.00. The tenant testified that she has made no payment of rent since receiving the landlord's 10 Day Notice.

I accept the evidence of the landlords that there is a rental arrear and that the tenant failed to pay the full rent due within the 5 days of service. Accordingly, I find that the tenancy ended on the effective date of the 10 Day Notice, March 9, 2017. Therefore, I find that the landlords are entitled to an Order of Possession, pursuant to section 55 of the *Act*.

I find that the tenant has provided insufficient evidence to support her position that there is a rental overpayment of \$325.00. The tenant has failed to provide any calculations, information from BC Housing, or formulas by which she arrives at her conclusion. I dismiss the tenant's application for a monetary award.

As I find this tenancy has ended I decline to make a finding in regards to the tenant's application that the landlords comply with the *Act*, regulation or tenancy agreement.

### Conclusion

The tenant's application is dismissed.

I grant an Order of Possession to the landlords effective **2 days after service on the tenant**. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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 29, 2017

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Residential Tenancy Branch