



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes      CNC, CNR

### Introduction

This hearing was scheduled to deal with the tenant's application to cancel a Notice to End Tenancy for Unpaid Rent and a Notice to End Tenancy for Cause. Both parties appeared at the hearing and were provided the opportunity to make submissions, in writing and orally, and to respond to the submissions of the other party.

### Preliminary matters

Both parties raised concerns over service of hearing documents. I was satisfied both parties had been provided sufficient time to review and respond to documents served upon them and I deemed the documents sufficiently served. Accordingly, I accepted and considered all of the documents provided by the parties.

The tenant raised the issue of jurisdiction and submitted that the respondent is not a landlord under the Act. After hearing from the parties I called the owner of the residential property as a witness. The owner of the property confirmed in the presence of both parties that the respondent acts on the owner's behalf with respect to the residential property. The definition of a landlord includes the owner's agent or a person acting on behalf of the owner with respect to tenancy agreements and performs duties of a landlord under the Act. Upon hearing from the owner, I was satisfied the respondent meets the definition of a landlord under the Act and I found that I have jurisdiction to resolve this dispute.

### Issue(s) to be Decided

Should the Notices to End Tenancy be upheld or cancelled?

### Background and Evidence

The tenancy commenced in March 2010 and the tenant is required to pay rent of \$495.00 on the 1<sup>st</sup> day of every month under a verbal tenancy agreement. On February 2, 2011 the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent and a 1 Month Notice to End Tenancy for Cause. The tenant disputed both notices.

The 10 Day Notice indicates the tenant failed to pay rent of \$495.00 on February 1, 2011. The tenant acknowledged that he withheld rent from the landlord. The tenant submitted that he was willing to pay rent only to the owner of the property. The landlord verbally requested an Order of Possession.

I also heard that the landlord issued the 1 Month Notice due to illegal activity by the tenant. The tenant denied the landlord's accusations.

### Analysis

Where a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent or dispute the Notice. The tenant did not pay the outstanding rent but did dispute the Notice within five days of receiving it. When a tenant disputes a 10 Day Notice the tenant must establish that the tenant had a legal right to withhold rent or that the rent was not owing. Based upon the tenant's own submissions, I do not find the tenant had a legal right to withhold rent from the landlord. Further, upon review of the Notice I am satisfied that the rent was outstanding and the Notice to be otherwise valid.

The tenant's belief that the landlord did not have authority to act on behalf of the owner was unfounded and not a basis to withhold rent. Certainly the tenant could have made application to ascertain the applicability of the Act and identification of the landlord before deciding to withhold rent. Unfortunately for the tenant the tenant chose to withhold rent and then determine the identity of the landlord.

In light of the above, I find the tenant did not establish a basis to have the 10 Day Notice cancelled and I find the tenancy has ended for unpaid rent. I grant the landlord's verbal request for an Order of Possession as permitted by section 55 of the Act. The Order of Possession is effective two (2) days after service upon the tenant. The Order of Possession may be enforced in The Supreme Court of British Columbia as an Order of that court.

Since the tenancy has ended for unpaid rent I do not find it necessary to consider the validity or merits of the 1 Month Notice.

### Conclusion

The tenancy has ended for unpaid rent and the landlord has been provided an Order of Possession effective two (2) days after service upon the tenant.

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: February 17, 2011.

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Residential Tenancy Branch