



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## DECISION

Dispute Codes MT, CNR  
OPR, MNR, FF

### Introduction

This matter dealt with an application by the Tenant for more time to cancel a notice to end tenancy and to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 22, 2011. The Landlord applied for an Order of Possession and a Monetary Order for unpaid rent as well as to recover the filing fee for this proceeding.

At the beginning of the hearing the Parties said that the Tenant's co-tenant named on the application, C.C., moved out of the rental unit on March 25, 2011 and as a result, the style of cause is amended to remove C.C. as a Party.

### Issue(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?
2. Are there rent arrears and if so, how much?

### Background and Evidence

This month-to-month tenancy started on October 1, 2011. Rent is \$700.00 per month payable in advance on the 1<sup>st</sup> day of each month. The Landlord said the Tenant had rent arrears of \$150.00 for February 2011 and did not pay rent for March 2011 when it was due and as a result, on March 22, 2011, the Landlord served the Tenant in person with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 22, 2011.

The Parties agree that sometime in February 2011 the Landlord agreed to give the Tenant more time to pay the rent arrears for February 2011 but did not agree to give the Tenant more time to pay rent for March 2011. The Parties also agree that the Tenant has not paid the rent arrears for February and March 2011 and has not paid rent for April 2011.

The Tenant said he filed his application to cancel the 10 Day Notice late because he was relying on financial assistance from the Ministry to pay the overdue rent but they delayed making a payment because they said they required further information.

### Analysis

Section 46(4) of the Act states that **within 5 days of receiving** a Notice to End Tenancy for Unpaid Rent or Utilities, a Tenant must either pay the overdue rent or apply for dispute resolution. If a Tenant fails to do either of these things, then under section 46(5) of the Act, they are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and they must vacate the rental unit at that time. I find that the Tenant received the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities in person on March 22, 2011. Consequently, the Tenant would have had to pay the amount shown as rent arrears on the 10 Day Notice or apply to dispute it **no later than March 28, 2011**. The Tenant filed his application for dispute resolution on March 30, 2011. The Tenant said he filed his application late because he believed he would be able to get assistance to pay the rent arrears.

Section 66(1) of the Act says that the director may extend a time limit under the Act but only in exceptional circumstances. RTB Policy Guideline #36 sets out some examples of what **would not** be considered exceptional circumstances such as a party not paying attention to the correct procedure or changing their mind about filing an application. I find that the Tenant's reason for filing late does not amount to exceptional circumstances because there was nothing preventing him from applying to cancel the Notice. The Tenant admitted that he delayed filing his application in the hope that the arrears would be paid first. Consequently, the Tenant's applications for more time to apply to cancel a Notice to End Tenancy and to cancel the 10 Day Notice are dismissed without leave to reapply for this reason.

However, even if I had granted the Tenant's application for more time to apply, I find that there are no grounds for cancelling the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 22, 2011. The Tenant admitted that there were rent arrears owing of \$850.00 as alleged on the 10 Day Notice, that those arrears remain unpaid and that there was no agreement with the Landlord to extend the time to pay the rent for March 2011. Consequently, I find that the Landlord is entitled pursuant to s. 55(2)(b) of the Act to an Order of Possession to take effect 2 days after service of it on the Tenant.

I also find that the Landlord is entitled to recover rent arrears for February of \$150.00, for March 2011 of \$700.00 and for April 1 – 19, 2011 in the pro-rated amount of \$433.33. I also find that the Landlord is entitled to recover a loss of rental income for April 20 – 30, 2011 in the pro-rated amount of \$266.67 as well as the \$50.00 filing fee for this proceeding.

### Conclusion

The Tenant's application is dismissed without leave to reapply. An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of

**\$1,600.00** have been issued to the Landlord. A copy of the Orders must be served on the Tenant; the Order of Possession may be enforced in the Supreme Court of British Columbia and the Monetary Order may be enforced in the Provincial (Small Claims) 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: April 19, 2011.

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Residential Tenancy Branch