



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC CNR

This hearing dealt with the tenant's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act"), seeking to cancel a 10 day Notice to End Tenancy for Unpaid Rent, seeking to cancel a 1 Month Notice to End Tenancy for Cause, and to recover the filing fee.

The hearing process was explained to the tenant and an opportunity was given to ask questions about the hearing process. Thereafter the tenant gave affirmed testimony, was provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me.

The respondent landlord did not attend the hearing. As a result, service of the Notice of a Dispute Resolution Proceeding was considered. The tenant testified that he served the landlord with a copy of the Notice of a Dispute Resolution Hearing by registered mail on July 30, 2012 to the landlord's service address. The tenant provided a registered mail tracking number as evidence and affirmed that the landlord signed for the registered mail package on August 10, 2012. The tenant stated that when he checked the online tracking service, the package showed as "item successfully delivered" and was signed by a name matching the name of the landlord. I find that the landlord was served with notice of this hearing in accordance with the *Act*.

### Preliminary Matter

The tenant affirmed that the landlord had previously served a notice to end tenancy and a decision was made in June, 2012 cancelling that notice. The tenant also advised that the landlord did not attend the last hearing and was frustrated at having to continue to file for dispute resolution and pay the associated fees when the landlord continues to serve notices to end the tenancy, and then does not attend at the hearing.

### Issues to be Decided

- Should the 10 Day Notice to End Tenancy for Unpaid Rent and the 1 Month Notice to End Tenancy for Cause be cancelled?
- Should the applicant tenant recover the filing fee?

### Background and Evidence

The tenant affirmed that a written tenancy agreement exists that indicates that a month to month tenancy began on August 1, 2011. Rent in the amount of \$875.00 is due on the first day of each month. A security deposit of \$440.00 was paid at the start of the tenancy.

The tenant provided oral testimony that a 10 Day Notice for Unpaid Rent (the "10 Day Notice") was taped to his door, which he received on July 22, 2012. The 10 Day Notice was dated by the landlord on July 20, 2012 and alleged that the tenant did not pay the rent in the amount of \$875.00. The tenant disputed this by stating that he paid the landlord on July 1, 2012 by cheque and that the landlord did not cash the cheque until after serving the 10 Day Notice. The tenant provided the cheque number and the banking stamp number from the back of the cashed cheque, which the tenant states was signed by the landlord. The tenant provided further evidence by stating that according to this online banking summary, the amount of \$875.00 was deducted on July 30, 2012. The tenant stated that he believes the landlord purposely did not cash the cheque in the hopes that she could evict him based on unpaid rent and then decided to cash the cheque after serving the 10 Day Notice. The tenant disputed the 10 Day Notice within five days in accordance with the *Act*.

The tenant stated that he was also served with a 1 Month Notice to End Tenancy for Cause dated July 20, 2012 and applied for dispute resolution within 10 days in accordance with the *Act*.

The tenant stated that the landlord recently moved into the main floor of the home where he rents a unit. The tenant testified that the landlord is trying to move people from one unit to another so that she can renovate the home. He stated that the landlord offered him two months of free rent but he declined her offer as he did not wish to move.

The tenant provided a copy of the 10 Day Notice to End Tenancy for Unpaid Rent and the 1 Month Notice to End Tenancy for Cause as evidence prior to the hearing.

### Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

The landlord served the tenant with two notices, a 10 Day Notice for Unpaid Rent and a 1 Month Notice to End Tenancy for Cause. The tenant disputed both notices within the required timeframe in accordance with the *Act*. In the case of disputed notices, the landlord who has served the notices has the burden of proof to prove the reasons set out in the notices at a dispute resolution hearing. As the landlord has failed to appear at the hearing, **I find** the landlord has failed to meet the burden of proof. Therefore, **I cancel** the 10 Day Notice to End Tenancy for Unpaid Rent, and the 1 Month Notice to End Tenancy for Cause. **I order** that the tenancy continues until ended in accordance with the *Act*.

If the landlord continues to serve notices under the *Act* without merit, the tenant may be entitled to future compensation for loss of quiet enjoyment. In addition, the landlord could be subject to administrative penalties under the *Act*, up to \$5,000.00 per day.

As the tenant was successful in his application, I grant the tenant the recovery of the filing fee of \$50.00. **I authorize** the tenant to deduct the amount of **\$50.00** from the rent owed for September 2012.

### Conclusion

I cancel the 10 Day Notice for Unpaid Rent and the 1 Month Notice to End Tenancy for Cause.

If the landlord continues to serve notices under the *Act* without merit, the tenant may be entitled to future compensation for loss of quiet enjoyment. In addition, the landlord could be subject to administrative penalties under the *Act*, up to \$5,000.00 per day.

I grant the tenant the recovery of the \$50.00 filing fee and authorize the tenant to deduct that amount from September 2012 rent.

For the benefit of both parties, I am including a copy of *A Guide for Landlords and Tenants in British Columbia* with my Decision.

This decision is final and binding on the parties, except as otherwise provided under the *Act*, and 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: August 23, 2012

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Residential Tenancy Branch