



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNR, FF

### Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent and for recovery of the filing fee.

The parties appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

At the outset of the hearing, neither party raised any issues regarding service of the application or the evidence.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant evidence regarding the facts and issues in this decision.

*Preliminary Issue:* The landlord also filed an application for dispute resolution, seeking an order of possession based upon a 1 Month Notice to End Tenancy for Cause, which was scheduled on this date and to be heard in conjunction with the tenant's application. In other words, the tenant's present application and the landlord's application were joined administratively and set to be heard on the same day.

However, during the course of the hearing, the tenant informed me that she had filed an application for dispute resolution disputing the 1 Month Notice, which was set for hearing on November 8, 2012, and had sent the landlord a Notice of Hearing by registered mail. The landlord said he had not received the Notice and was not aware of the hearing.

I then concluded that the arbitrator in the hearing on November 8, 2012, will have to consider the same facts and make the same or similar findings of law in resolving tenant's application and the landlord's application as each dealt with the same Notice. Due to my conclusion, I informed the parties I would consider only the tenant's application and that the landlord's application will be adjourned and scheduled to be

heard on the same day as the tenant's application seeking cancellation of a 1 Month Notice.

### Issue(s) to be Decided

Is the tenant entitled to an order cancelling a Notice to end the tenancy and to recover the filing fee?

### Background and Evidence

I heard undisputed testimony that this month to month tenancy began on April 25, 2012, monthly rent is \$800.00 and the tenant paid a security deposit of \$400.00 on or about April 16, 2012.

The landlord submitted evidence that on September 15, 2012, he served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"), by posting on it the door, listing an effective move out date of September 15, 2012, and unpaid rent of \$120.00 owed on July 1, 2012, and unpaid utilities of \$189.40.

The tenant disagreed that she owed \$120.00 for unpaid rent, as she wrote a cheque in that amount and that the funds are no longer in her account. The tenant said the bank is currently conducting an investigation to trace the funds.

However, despite this, the tenant said that she paid the unpaid rent and unpaid utilities listed on the Notice on September 20, 2012.

The landlord confirmed the payments.

### Analysis and Conclusion

Under section 46 of the Act, a landlord may serve a tenant a 10 Day Notice to End Tenancy for Unpaid Rent if rent is unpaid on any day after the day it is due and/or if utilities required to be paid pursuant to the tenancy agreement are not paid within 30 days after written demand for them. This section goes on to say that if the tenant pays the overdue rent or unpaid utilities, the Notice has no effect.

The undisputed evidence shows that the tenant paid the unpaid rent and unpaid utilities listed on the Notice dated September 15, 2012, within 5 days of having received it.

I therefore order that the Notice dated September 15, 2012, be cancelled, with the effect that the tenancy continues until it may otherwise legally end under the Act.

As the tenant has been successful with her application, I allow her to recover the filing fee by making a deduction of \$50.00 from a future month's rent payment.

In the alternative should the tenancy not continue, I have granted the tenant a monetary order for \$50.00 and have enclosed it with the tenant's Decision, enforceable in the Provincial Court of British Columbia (Small Claims) for enforcement as an order of that Court.

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* and is being mailed to both the applicant and the respondent.

Dated: October 24, 2012.

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Residential Tenancy Branch