



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Purdential Power Play Realty  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR, FF

### Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by one of the tenants and two additional occupants; and the landlord's agent.

During the hearing, the landlord verbally requested an order of possession should the tenants be unsuccessful in their Application.

### Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 46, 67, and 72 of the *Residential Tenancy Act (Act)*.

If the tenants are unsuccessful in their Application seeking to cancel the 10 Day Notice to End Tenancy for Unpaid Rent it must be decided if the landlord is entitled to an order of possession, pursuant to Section 55 of the *Act*.

### Background and Evidence

The landlord submitted into evidence a copy of a tenancy agreement signed by the parties on January 7, 2012 for a 1 year and 16 day fixed term tenancy beginning on January 15, 2012 that converted to a month to month tenancy on February 1, 2013 for the monthly rent of \$1,700.00 due on the 1<sup>st</sup> of each month with a security deposit of \$850.00 paid.

The tenants submitted into evidence the following documents:

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent issued on July 17, 2014 with an effective vacancy date of July 30, 2014 due to unpaid rent in the amount of \$2,600.00 due July 1, 2014. I note the amount has been altered to read \$850.00 and is landlord's agent confirms that he agreed with the alteration;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent issued on September 2, 2014 with an effective vacancy date of September 13, 2014 due to unpaid rent in the amount of \$2,600.00 due September 1, 2014; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent issued on September 10, 2014 with an effective vacancy date of September 30, 2014 due to unpaid rent in the amount of \$1,700.00.

The tenant acknowledged that on July 17, 2014 he received the landlord's 10 Day Notice to End Tenancy for Unpaid Rent issued on July 17, 2014. The tenant submits that they did not pay rent for the month of July 2014 because the residential property had suffered substantial damage in a flood in May 2014 and the landlord had failed to do anything about the damage.

The tenant submits that he was not aware that he could file an Application for Dispute Resolution and that his friends had told him he could do so. The tenant did not know that he had only 5 days to submit his Application for Dispute Resolution to seek to cancel the Notice.

The landlord's agent confirmed that when the tenants did pay the July 2014 rent on August 1, 2014 he agreed to allow the tenants to only pay \$850.00 as compensation for the issues related to the flood.

The tenant submitted that on the 10 Day Notice to End Tenancy for Unpaid Rent the landlord has put the male tenant's first name in the last name section and his last name in the first name section.

### Analysis

Section 26 stipulates that a tenant must pay rent when it is due under the tenancy agreement whether or not the landlord complies with the *Act*, regulation or tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the rent. Authority is granted under the *Act* in limited circumstances such as: if the tenant has made an overpayment of a security deposit; the tenants have paid for emergency

repairs and the landlord has failed to reimburse the tenants; or the tenant has obtained an order from an Arbitrator allowing the tenant to not pay rent.

From the evidence before me, I find the tenants had no authority under the Act to retain any portion of the rent and as such, the tenants were required on July 1, 2014 to pay the rent of \$1,700.00 in full.

Section 46 of the *Act* allows a landlord to end a tenancy if rent is unpaid on any day after the day it is due by giving the tenant notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

Section 46(4) goes on to say that within 5 days of receiving such a notice the tenant may pay the overdue rent, in which case the notice has no effect or dispute the notice by making an application for dispute resolution.

And Section 46(5) states that if a tenant who receives a notice under Section 46 does not pay the rent or file an application for dispute resolution within 5 days the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date.

From the testimony and evidence before me I find the tenants did not pay any rent amounts until August 1, 2014 (15 days after receipt of the Notice) and the tenants did not submit their Application for Dispute Resolution until July 29, 2014 (13 days after receipt of the Notice).

For these reasons, I find the tenants did not comply with the requirements under 46(4) to either pay the rent in full or file an Application for Dispute Resolution to dispute the Notice within 5 days of receipt of the Notice and pursuant to Section 46(5) the tenants are conclusively presumed to have accepted the tenancy ended on the effective date of the notice and must vacate the rental unit.

Further, while I accept the landlord reversed the tenants name on the 10 Day Notice I find that this error does not invalidate the Notice. Clearly, the tenant understood that he was one of the two named tenants as he filed the Application for Dispute Resolution seeking to cancel the Notice.

Conclusion

Based on the above, I dismiss the tenants' Application for Dispute Resolution in its entirety.

I find the landlord is entitled to an order of possession effective **two days after service on the tenants**. This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced 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*.

Dated: October 1, 2014

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Residential Tenancy Branch

