



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 353806 BC LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes

CNR

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent, dated January 7, 2015 ("10 Day Notice"), pursuant to section 46.

The landlord's agent, MW ("landlord") and the tenant attended the hearing and were each given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord confirmed that she is the building manager for the rental building and that she had authority to represent the landlord company named in this application, as agent at this hearing.

The landlord gave sworn testimony that she served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent, dated January 7, 2015 ("10 Day Notice"), by posting it to the tenant's rental unit door around January 7, 2015, although she could not recall the exact date. The tenant confirmed receipt of the 10 Day Notice around January 7, 2015, although she could not recall the exact date. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the landlord's 10 Day Notice, as declared by the parties.

The tenant testified that she served the landlord with the tenant's application for dispute resolution hearing package ("Application") on January 15, 2015, by leaving a copy in the landlord's mailbox. The landlord confirmed receipt of the tenant's Application. Although this is not one of the methods of service outlined in section 89 of the *Act*, the landlord confirmed receipt and she reviewed the tenant's Application. Accordingly, I find that there is no prejudice to the landlord in considering the tenant's Application and I find that the landlord was sufficiently served for the purposes of section 71(2)(c) of the *Act*.

### Issues to be Decided

Should the landlord's 10 Day notice be cancelled?

### Background and Evidence

The tenant testified that this tenancy began on July 1, 2014, for a fixed term of one year. Monthly rent in the amount of \$900.00 is payable on the first day of each month. A security deposit of \$450.00 and a pet damage deposit of \$450.00 were paid by the tenant and the landlord continues to retain both of these deposits. The tenant continues to reside in the rental unit.

A mutual agreement to end tenancy was signed by both parties on December 31, 2014, for an end to this tenancy at 12:00 p.m. on January 31, 2015. The tenant stated that she will be vacating the rental unit on January 31, 2015, as per the mutual agreement.

The landlord issued the 10 Day Notice, indicating that rent in the amount of \$900.00 was due on January 1, 2015. The notice indicates an effective move-out date of January 17, 2015. The tenant provided a copy of the 10 Day Notice after the hearing, at my request, as she did not provide it with her Application.

Both parties confirmed that the tenant had not paid rent for January 2015 in the amount of \$900.00. The tenant indicated that she withheld rent because she wanted to ensure the full return of her security and pet damage deposits when she vacates the rental unit. The tenant also stated that she withheld rent because she was awaiting the decision from a previous hearing before the Residential Tenancy Branch ("RTB") on January 22, 2015, which she claimed may entitle her to a monetary award from the landlord. The tenant testified that she is aware that she was not entitled to withhold rent and that she had not performed any emergency repairs entitling her to deduct any amounts from rent. The landlord confirmed that she had not yet made any applications to recover this unpaid rent for January 2015.

### Analysis

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

Both parties agreed to the following final and binding settlement of all issues currently under dispute at this time:

1. Both parties agreed that, pursuant to their mutual agreement to end tenancy dated December 31, 2014, this tenancy will end by 12:00 p.m. on January 31, 2015, by which time the tenant will have vacated the rental unit; and
2. The tenant agreed to pay the landlord a total of \$900.00 in full satisfaction of January 2015 rent by 12:00 p.m. on January 31, 2015.

These particulars comprise the full and final settlement of all aspects of this dispute for both parties. Both parties gave verbal sworn affirmation at the hearing that they agreed to the above terms, which settle all aspects of this dispute.

### Conclusion

To give effect to the settlement reached between the parties, and as advised to both parties during the hearing, I issue the attached Order of Possession to be used by the landlord **only** if the tenant fails to vacate the rental premises by 12:00 p.m. on January 31, 2015. The landlord is provided with this Order in the above terms and the tenant must be served with this Order in the event that the tenant does not vacate the premises by 12:00 p.m. on January 31, 2015. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

In order to implement the above settlement reached between the parties, and as advised to both parties during the hearing, I issue a monetary Order in the landlord's favour in the amount of \$900.00. I deliver this Order to the landlord in support of the above agreement for use **only** in the event that the tenant does not pay \$900.00 to the landlord by 12:00 p.m. on January 31, 2015. The landlord is provided with this Order in the above terms and the tenant must be served with a copy of this Order as soon as possible after a failure to comply with the terms of the above monetary agreement. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The landlord's 10 Day Notice, dated January 7, 2015, is cancelled and of no force or effect.

Both parties were advised during the hearing, that the tenant's security and pet damage deposits are to be dealt with at the end of this tenancy, in accordance with section 38 of the *Act*. 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: January 30, 2015

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Residential Tenancy Branch

