



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding WESTPARK ESTATES MGT. LTD. DBA CHERRY COURT  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes                      CNR OLC FF

### Introduction

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 or Utilities (the "10 Day Notice"), for an order directing the landlord to comply with the *Act*, regulation or tenancy agreement, and to recover the cost of the filing fee.

The tenant and an agent for the landlord (the "agent") attended the teleconference hearing. The hearing process was explained to the parties and an opportunity to ask questions was provided to the parties at the start of the hearing.

The tenant provided a registered mail tracking number in evidence and stated that the Application for Dispute Resolution (the "Application"), the Notice of Dispute Resolution Hearing (the "Notice of Hearing") and first documentary package were served by registered mail on June 24, 2015. The registered mail receipt was also submitted in evidence and the address for the landlord was confirmed by the agent at the start of the hearing. According to the Canada Post registered mail tracking website, the registered mail package was signed for, accepted and successfully delivered on June 26, 2015. I find the landlord was sufficiently served in accordance with the *Act* as a result. The agent confirmed that the landlord did not submit evidence in response to the tenant's application.

### Preliminary and Procedural Matters

The parties agreed that the incorrect name of the landlord was inadvertently used on the tenant's application. By consent of the parties, the tenant's application was amended to the correct spelling of the landlord company name which is reflected on the cover page of this Decision.

At the outset of the hearing, both parties were advised of the expected conduct of the parties during the hearing. Specifically, the parties were advised that interruptions by either party would not be tolerated. The tenant was cautioned on more than five occasions to discontinue interrupting both the agent and myself during the hearing. Despite being repeatedly cautioned for interrupting, the tenant continued to interrupt until the hearing ended after 33 minutes.

### Background and Evidence

The parties agreed that a tenancy agreement began on September 1, 2011. A copy of a written agreement entitled "Application For Rent of Suite" was submitted in evidence as proof of the written agreement between the parties related to this tenancy. The parties agreed that monthly rent in the amount of \$839 was due on the first day of each month which is supported by the written agreement between the parties.

The tenant testified that she had a verbal agreement with a different agent of the named landlord company to pay her rent later in the month. The agent disputed that any such verbal agreement was made and that all tenants are expected to pay rent on the first day of each month. A copy of a notice to tenants was submitted in evidence which reads in part that, "... rent must be received on or before 1<sup>st</sup> of every month...". The "Application for Rent of Suite" document that the parties referred to as a tenancy agreement reads in a part, "...monthly rental of \$839 plus \$0 for parking, both payable monthly in advance on the first day of each month during the continuations of such tenancy...".

The tenant confirmed receiving a 10 Day Notice dated June 15, 2015 on June 15, 2015. The tenant disputed the 10 Day Notice within the required timelines under section 46 of the *Act* by disputing the 10 Day Notice on June 19, 2015. The 10 Day Notice states that \$839 in unpaid rent was due on June 1, 2015. The agent testified that the tenant provided a post-dated cheque for \$839 with the date of June 26, 2015 on it, which the tenant confirmed sending, a copy of which was submitted in evidence.

The effective vacancy date on the 10 Day Notice was June 30, 2015. The tenant continues to occupy the rental unit. The agent stated that although the tenant paid \$839 towards August 2015 rent, the landlord requested an order of possession and has not reinstated the tenancy.

### Analysis

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

**10 Day Notice** – The agent for the landlord issued a 10 Day Notice dated June 15, 2015 which the tenant confirmed she received on the same day for \$839 in unpaid rent owing as of June 1, 2015. While the tenant claims she was advised she could pay her rent later in the month, the agent disputes that a verbal agreement was made and that the monthly rent is still due on the 1<sup>st</sup> day of each month as supported by the written agreement from 2011 and for which tenants were reminded of by way of a notice to all tenants in the building. Based on the above, I find that the 10 Day Notice dated June 15, 2015 is valid as a written agreement between the parties takes precedence over a disputed verbal agreement. In other words, the terms of the written agreement remain enforceable. Therefore, I dismiss the tenant's application to cancel the 10 Day Notice which had an effective vacancy date of June 30, 2015, as the 10 Day Notice is valid.

Once I dismissed the tenant's application to cancel the 10 Day Notice, the agent verbally requested an order of possession. Pursuant to section 55 of the *Act*, I must grant the landlord an order of possession once I have dismissed the tenant's application to dispute the 10 Day Notice or have upheld the 10 Day Notice. Therefore, I grant the landlord an order of possession for unpaid rent effective August 31, 2015 at 1:00 p.m. as I find that payment for use and occupancy was paid for August 2015. I find that the landlord has not reinstated the tenancy and that the tenant has been overholding in the rental unit since the end of tenancy date which I find to be June 30, 2015.

I find it was not necessary to consider the tenant's request for an order directing the landlord to comply with the *Act*, regulation or tenancy agreement as the tenancy ended on June 30, 2015.

### Conclusion

The tenant's application does not have merit.

The tenant's application to cancel the 10 Day Notice is dismissed.

The landlord has been granted an order of possession effective August 31, 2015 at 1:00 p.m. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

This decision is final and binding on the parties, unless 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 18, 2015

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Residential Tenancy Branch

