



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes:

**OPR, MNR, MT, CNR, FF**

### Introduction

This was a cross-application hearing.

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested an Order of possession for unpaid rent, a monetary Order for unpaid rent and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The tenants applied requesting more time to cancel a 10 day Notice to end tenancy for unpaid rent issued on November 26, 2015 and to cancel the Notice.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I

### Preliminary Matters

On December 11, 2015 the landlord submitted an application for dispute resolution. On January 6, 2016 the landlord retrieved the Notice of hearing and hearing documents from the Residential Tenancy Branch (RTB) and served them to the tenant. The landlord had been out of the country and her daughter was not permitted to retrieve the documents when she attempted to do so.

The landlord said she personally served the tenant with the hearing documents, at the rental unit, at approximately 3:00 p.m. on January 6, 2016. The tenant said he was not given any notice of the landlord's application or hearing.

The landlord's witness was called into the hearing. C.D. provided affirmed testimony that she went with the landlord several weeks ago and watched the landlord serve documents to a male, at the rental unit address. She could not recall the exact date

service occurred. The witness did not know the person who was served, but once she heard him speak during the hearing the witness said that she could recognize his voice as that of the person who was served. The witness said that the landlord was giving the tenant the papers about the hearing as rent had not been paid; the papers had come from the lawyer.

I considered the testimony of each party and the witness and have determined that, on the balance of the probabilities, the tenant was given Notice of the landlord's hearing. The landlord knows who the tenant is, to see him. I found the witness gave consistent, believable and unrehearsed testimony regarding service. The only other documents given to the tenant by the landlord were given in November, 2015. This was confirmed by the tenant.

Therefore, find that the tenant was served with Notice of the landlord's application effective January 6, 2015.

The landlord confirmed receipt of the tenant's hearing documents when she returned from out of the country at the beginning of January 2016.

The landlord's application for dispute resolution included an incorrect surname for the tenant. That name has been corrected.

The tenant and a co-tenant applied for dispute resolution. The landlord said that she did not rent to the second applicant and he was not named on her application for dispute resolution.

#### Issue(s) to be Decided

Is the landlord entitled to an Order of possession for unpaid rent or should the Notice be cancelled?

Is the tenant entitled to more time to apply to cancel the 10 day Notice ending tenancy for unpaid rent issued on November 26, 2015?

Is the landlord entitled to a monetary Order for unpaid rent?

#### Background and Evidence

The parties agreed that the tenant moved from a RV on the landlord's property to the rental unit in late October 2015. A tenancy agreement was not signed.

The landlord said that rent is \$1,300.00 per month due on the first day of each month. The tenant agreed rent is due on the first day of each month but that rent owed is \$650.00, not \$1,300.00.

The landlord said the tenant paid \$400.00 on November 1, 2015. The Notice ending tenancy issued on November 26, 2015 showed that \$600.00 remained owing in November 2015 and a notation that rent was \$1,300.00.

I asked the landlord how the amount on the Notice could be correct, if the tenant owed \$1,300.00 and had paid \$400.00 the balance owed would be \$900.00. The landlord did not submit written records as evidence and did not have any for reference during the hearing. The landlord was unable to provide more than disputed testimony regarding rent owed and paid. The landlord then said the tenant had paid \$700.00 in November, 2015 but that several payments were made. The landlord could not provide the dates and amounts of payments made.

The tenant confirmed that no rent has been paid in December 2015 or January 2016. February 2016 rent is due today.

The tenant confirmed receipt of a 10 day Notice ending tenancy for unpaid rent or utilities which was issued and given to him on November 26, 2015. The Notice did not include an effective date.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$600.00 within five days after the tenant was assumed to have received the Notice. The Notice also indicated that the tenant was presumed to have accepted that the tenancy was ending and that the tenant must move out of the rental by the date set out in the Notice unless the tenant filed an Application for Dispute Resolution within five days.

The tenant understood that the Notice required action on his part and he disputed the Notice outside of the required five day time-limit. During the hearing I explained that I would consider amending the Notice, to include an effective date, but that the absence of an effective date failed to comply with the Act.. Therefore, if the effective date were to be added I would allow the tenant more time to dispute the Notice.

The tenant said he would vacate the unit by the end of February. The landlord only wished to reach agreement if the tenant were to pay all rent owed. I explained that I would issue a decision in relation to rent owed and the possible end of the tenancy.

The tenant said he might be able to pay \$200.00 toward rent owed today.

### Analysis

Based on the tenants' confirmation I find that he received the 10 day Notice to end tenancy for unpaid rent on November 26, 2015.

Section 52 of the Act provides:

### ***Form and content of a notice to end tenancy***

**52** *In order to be effective, a notice to end a tenancy must be in writing and must*

*(a) be signed and dated by the landlord or tenant giving the notice,*

*(b) give the address of the rental unit,*

*(c) state the effective date of the notice,*

*(d) except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy, and*

*(e) when given by a landlord, be in the approved form.*

(Emphasis added)

Section 68 of the Act provides:

**68** *(1) If a notice to end a tenancy does not comply with section 52 [form and content of notice to end tenancy], the director may amend the notice if satisfied that*

*(a) the person receiving the notice knew, or should have known, the information that was omitted from the notice, and*

*(b) in the circumstances, it is reasonable to amend the notice.*

*(2) Without limiting section 62 (3) [director's authority respecting dispute resolution proceedings], the director may, in accordance with this Act,*

*(a) order that a tenancy ends on a date other than the effective date shown on the notice to end the tenancy, or*

*(b) set aside or amend a notice given under this Act that does not comply with the Act.*

I find that the Notice ending tenancy did not comply with section 52(c) of the Act. Therefore; pursuant to section 68(1)(b) of the Act I find that the Notice is amended to include the correct effective date. I find that it is reasonable to accept that the tenant knew the Notice required payment of rent by a specific date, as the tenant understood he should dispute the Notice or he would have to vacate.

Section 46(1) of the Act stipulates that a 10 day Notice ending tenancy is effective 10 days after the date that the tenant receives the Notice. As the tenant had confirmed receipt of the Notice on November 26, 2015, I find that the earliest effective date of the Notice was December 6, 2015.

In the absence of evidence to the contrary, I find that the tenant was served with a Notice ending tenancy that required the tenant to vacate the rental unit on December 6, 2015, pursuant to section 46 of the Act.

Section 46 of the Act stipulates that a tenant has five days from the date of receiving the Notice ending tenancy to either pay the outstanding rent or to file an Application for

Dispute Resolution to dispute the Notice. The tenant disputed the Notice and has been given additional time to dispute. However, the tenant has confirmed that outside of \$400.00 paid in November 2015 no additional rent has been paid.

Therefore; pursuant to section 46(5) of the Act, I find that the tenant accepted that the tenancy has ended on the effective date of the Notice; December 6, 2015. The tenant was required to pay the balance of November 2015 rent owed no later than December 1, 2015 and he failed to do so.

The landlord has the burden of proving the sum of rent owed. The landlord did not sign a tenancy agreement with the tenant, as is required by section 13(1) of the Act. Therefore, in the absence of any evidence verifying the sum of rent that is owed each month I find, pursuant to section 62(3) of the Act that rent is \$650.00 per month, the amount put forward by the tenant. The landlord has failed, on the balance of probability, to prove rent owed is \$1,300.00. There is no written tenancy agreement or any other documentation proving the landlord's submission regarding rent owed.

Therefore, I find that the tenant has failed to pay rent and per diem rent in the sum of \$2,150.00 from November 2015 to February 1, 2016, inclusive (\$250.00 November 2015; \$650.00 for each of December 2015, January 2016 and February 2016.) I have included February 1, 2016 rent as the tenant offered to pay only \$200.00 of rent owed to the landlord today; the date another \$650.00 is due.

I have amended the application, pursuant to section 4.2 of the RTB Rules of Procedure, to include unpaid rent to February 2016. As rent is the most basic term of a tenancy I find that the amendment could be reasonably anticipated by the tenant.

As the landlord's application has merit I find, pursuant to section 72 of the Act that the landlord is entitled to recover the \$50.00 filing fee from the tenant for the cost of this Application for Dispute Resolution.

The landlord has been granted an Order of possession that is effective two days after service to the tenant. This Order may be served on the tenant, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

Based on these determinations I grant the landlord a monetary Order in the sum of \$2,200.00. In the event that the tenant does not comply with this Order, it may be served on the tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Any payment made by the tenant to the landlord will be deducted from the monetary Order issued to the landlord. Each party should keep a copy of proof of payments made. Pursuant to section 26(2) of the Act, the landlord is required to issue a receipt for any cash payment made by the tenant.

The tenant's application is dismissed.

Conclusion

The tenant is entitled to more time to dispute the Notice ending tenancy.

The landlord is entitled to an Order of possession and monetary Order for unpaid rent and per diem rent.

The landlord is entitled to filing fee costs.

The tenants' application is dismissed.

This decision is final and binding on the parties 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: February 01, 2016

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Residential Tenancy Branch

