



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

For the tenant – MT, CNC, O

For the landlord – OPR, OPC, MNR, MNSD, FF

### Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenant applied for more time to file an application to cancel a Notice to End Tenancy and applied to cancel a One Month Notice to End Tenancy for Cause. The landlord applied for Order of Possession for unpaid rent or utilities; for an Order of Possession for Cause; for a Monetary Order for unpaid rent or utilities; for an Order permitting the landlord to keep all or part of the tenant's security deposit; and to recover the filing fee from the tenant for the cost of this application.

A legal Advocate for the tenant and an agent for the landlord attended the conference call hearing; the landlord's agent gave sworn testimony. The parties were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

- Is the tenant entitled to more time to file an application to dispute a Notice to End Tenancy?
- If so is the tenant entitled to an Order to cancel the One Month Notice to End Tenancy for cause?
- Is the landlord entitled to an Order of Possession based on the 10 Day Notice or the One Month Notice?
- Is the landlord entitled to a Monetary Order for unpaid rent?
- Is the landlord permitted to keep all or part of the security deposit?

### Background and Evidence

The parties agreed that this month to month tenancy started on November 21, 2015. Rent for this unit is \$700.00 per month due on the 1<sup>st</sup> of each month. The landlord's agent was unsure and provided conflicting evidence as to whether or not a security deposit was paid at the start of the tenancy.

*Regarding the 10 Day Notice-* The landlord's agent testified that the tenant paid \$375.00 on November 21, 2015. The landlord's agent also testified that the tenant paid \$325.00 in a separate amount on November 21, 2015. The landlord's agent later testified that the amount of \$325.00 was paid on December 15, 2015. The landlord's agent testified that the tenant had taken over the tenancy from his niece and had calculated himself that he should pay \$375.00 for November, 2015. This left an amount owed for December, 2015 of \$375.00

The landlord's agent testified that on January 01, 2016 the tenant paid \$325.00 by cheque and \$375.00 in cash, No rent was paid for February or March. The landlord's agent testified that the tenant was served a 10 Day Notice to End Tenancy on February 02, 2016 in person. The Notice states there is \$700.00 outstanding that was due on February 01, 2016. The Notice has an effective date of February 02, 2016.

The tenant's advocate stated that she had not been instructed by the tenant that a 10 Day Notice had been served upon the tenant and has no knowledge of this Notice or any unpaid rent. The tenant is not available to attend the hearing today as his phone is out of service and the tenant has some health issues. The tenant's advocate did; however, raise some issues about the landlord's agents confusing testimony regarding the tenant's rent payments, proof of rent outstanding and whether or not the payments made at the start of the tenancy were for rent or the security deposit.

The landlord seeks an Order of Possession for unpaid rent as the tenant has not applied to dispute the notice and still owes rent for December, February and March. The landlord also seeks a Monetary Order to recover unpaid rent and the filing fee.

*With regard to the One Month Notice* – The landlord's agent testified that the tenant or a person permitted on the property by the tenant has entered the landlord's unit upstairs while the landlord was away. The landlord's cheques were stolen and have been attempted to be cashed by the tenant's guest. The bank called as they had suspicions about the cheques. The landlord's agent has provided copies from the bank of these stolen cheques made out to the tenant's guest. The landlord's agent testified that the police came to the unit and found a finger print of the tenant or his guest in the landlords unit. The landlord's agent testified the police are currently investigating this matter. As the tenant or his guest broke into the landlord's unit the police advised the landlord's agent to change the locks to the landlord's unit. The landlord's agent has provided a copy of the locksmith's invoice and seeks to recover the amount of \$79.29 from the tenant.

The landlord's agent testified that due to this break-in the landlord served the tenant with a One Month Notice to End Tenancy for cause. The landlord's agent testified that this Notice was served on January 01, 2016 in person, and has an effective date of January 31, 2016. The Notice provided the following reasons to end the tenancy:

*The tenant has allowed an unreasonable number of occupants in the rental unit.*

The landlord's agent testified that the tenant allowed his friend AA to live in the unit with him. At other times there are four or five people staying in the unit and they appear to be there all day and night. Mail is being delivered to this other occupant of the unit which the landlord's agent has sent back. The landlord's agent referred to a letter provided in evidence to the occupant AA.

The tenant's advocate stated that the tenant only provided instructions that he had filed his application late because he was not feeling well. The tenant filed his application on January 15, 2016 to cancel the One Month Notice only. The tenant's advocate stated that the tenant only gave her instructions about an allegation made against him about a stolen bike. The police came and spoke to him about this but no charges were made. The tenant's advocate stated that she is unable to make comment on issues that she has not been made privy to.

#### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of the landlord's agent. With regard to the tenant's application to cancel the One Month Notice to End Tenancy for Cause; I accept that the landlord served the tenant with a One Month Notice to End Tenancy on January 01, 2016. This Notice was served in person. Therefore the tenant had 10 days from January 01, 2016 to January 11, 2016 to file an application to dispute the Notice. The tenant filed their application on January 15, 2016 which was 15 days after being deemed to have received the Notice.

I have carefully considered all the evidence before me, including the sworn testimony of both parties. Section 66(1) of the *Residential Tenancy Act* states:

**Director's orders: changing time limits**, and provides in part as follows:

*66(1) The director may extend a time limit established by this Act only in exceptional circumstances, other than as provided by section 59(3) [starting proceedings] or 81(4) [decision on application for review].*

The Residential Tenancy Policy Guideline # 36 speaks to “Extending a Time Period” and provides in part:

The word “exceptional” means that an ordinary reason for a party not having complied with a particular time limit will not allow a dispute resolution officer to extend that time limit. The word “exceptional” implies that the reason for failing to do something at the time required is very strong and compelling. Furthermore, as one Court noted, a “reason” without any force of persuasion is merely an excuse. Thus, the party putting forward said “reason” must have some persuasive evidence to support the truthfulness of what is said.

Some examples of what might **not** be considered "exceptional" circumstances include:

- the party who applied late for arbitration was not feeling well
- the party did not know the applicable law or procedure
- the party was not paying attention to the correct procedure
- the party changed his or her mind about filing an application for arbitration
- the party relied on incorrect information from a friend or relative

Following is an example of what could be considered "exceptional" circumstances, depending on the facts presented at the hearing:

- The party was in the hospital at all material times.

Consequently, I find that the reasons provided by the tenant’s advocate for the late filing of the tenant’s application, does not meet the exceptional circumstances required by section 66(1) of the *Act* to extend a time limit. As the tenant has been unable to demonstrate any exceptional circumstances as to why their application was not filed within the allowable 10 days after receiving the Notice I must dismiss the tenant’s application to cancel the Notice. The tenant’s applications for more time to file an application to dispute a Notice and to have the One Month Notice cancelled are therefore dismissed without leave to reapply.

With regard to the landlord's application for an Order of Possession for the One Month Notice, I find as the tenant's application has been dismissed the landlord is entitled to an Order of Possession pursuant to s. 55 of the *Act*.

With regard to the landlord's application for a Monetary Order for unpaid rent; The landlord's agent appeared to have little understanding of what rent was paid or owed prior to the landlord issuing the 10 Day Notice for unpaid rent for February, 2016. The landlord's agent testified that rent of \$375.00 was paid on November 21, 2015 for November's prorated rent. The landlord's agent's testimony then became confused as to the dates a further amount of rent was paid either on November 21 or December 15, 2015. As there is insufficient evidence to show that there is any outstanding rent for November or December, 2015 I will deal only with the outstanding rent shown on the 10 Day Notice. This Notice shows that the tenant failed to pay rent for February and the tenant has not disputed this Notice or instructed his advocate about the unpaid rent issue.

Consequently, I am satisfied from the evidence before me that the tenant owes rent for February, 2016 of **\$700.00** and did not dispute the 10 Day Notice. Furthermore, I am satisfied from the undisputed evidence before me that the tenant has also failed to pay rent for March, 2016 of **\$700.00**.

With regard to the landlord's claim for the cost of lock replacement; the landlord has provided a copy of the invoice to replace the lock that the landlord's agent has alleged was broken by the tenant or his guest. The tenant's advocate was not given instruction from the tenant concerning a break-in at the landlord's unit; I am satisfied from the undisputed evidence before me that the tenant's guest did obtain some cheque and it appears that these have been fraudulently made out to this guest and signed with a signature which is unlike the landlords. I accept on a balance of probabilities that this person did gain access to the landlord's unit and therefore as the tenant is responsible for the actions of his guests permitted on the property by the tenant I find the landlord has established a claim to recover the cost to replace the locks of **\$79.29**.

With regard to the landlord's application to keep the security deposit; as the landlord has not shown that the tenant paid a security deposit at the start of the tenancy then I am not prepared to deal with this section of the landlord's claim. The landlord is at liberty to deal with a security deposit if one was paid under s. 38 of the *Act* when the tenancy ends.

As the landlord's claim has merit I find the landlord is also entitled to recover the filing fee of **\$100.00** from the tenant pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the landlord pursuant to s. 67 and 72(1) of the *Act* for the following amount:

Unpaid rent for February and March, 2016	\$1,400.00
Replacement locks	\$79.29
Filing fee	\$100.00
Total amount due to the landlord	\$1,579.29

I accept that the tenant was served the 10 Day Notice to End Tenancy for unpaid rent on February 02, 2016, pursuant to section 88 of the *Residential Tenancy Act*. The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not pay the outstanding rent within five days nor apply to dispute the Notice to End Tenancy within five days.

Based on the foregoing, I find that the tenant is conclusively presumed, under section 46(5) of the *Act*, to have accepted that the tenancy ended on the effective date of the Notice. However as the landlord has already been issued with an Order of Possession based on the One Month Notice; no further Orders are required.

#### Conclusion

The tenant's application is dismissed in its entirety without leave to reapply.

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1,579.29**. The Order must be

served on the tenant. Should the tenant fail to comply with the Order, the Order may be enforced through the Provincial (Small Claims) Court of British Columbia as an Order of that Court.

The landlord has been issued an Order of Possession effective **two (2) days** after service upon the tenant pursuant to section 55(1) of the *Act*. This Order must be served on the tenant. If the tenant remains in Possession of the rental unit and does not relinquish that possession to the landlord then the Order may be filed in the Supreme Court of British Columbia and 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: March 09, 2016

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Residential Tenancy Branch



