



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes MT, CNR, MNDC, RP, O

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenant on January 28, 2016. The Tenant applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities (the “Notice”) and for more time to cancel the Notice. The Tenant also applied for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the “Act”), for the Landlord to make repairs to the rental unit, and for “Other” issues.

The Landlord, the Tenant, and a brain injury advocate for the Tenant appeared for the hearing. The Landlord and Tenant provided affirmed testimony during the hearing. Both parties provided a copy of the Notice into evidence prior to the hearing. The Landlord confirmed personal receipt of the Tenant’s Application. The Tenant confirmed that he had provided written evidence to the Residential Tenancy Branch and to the Landlord late because he had to wait a long time to gather evidence relating to his monetary claim which was dependant on documents from a number of agencies. The Tenant confirmed that his written evidence was related to his monetary claim.

The Tenant was informed that as this evidence was submitted late pursuant to the time limits set by the Residential Tenancy Branch Rules of Procedure and that it was not related to the issue of non-payment of rent which was the only issue I dealt with in this hearing, I would not consider this evidence in my decision. However, I allowed the Tenant to provide relevant evidence through oral testimony and submissions.

The hearing process was explained to the parties and they had no questions about the proceedings. Both parties were given a full opportunity to present their evidence, make submissions to me, and cross examine the other party on evidence relating to the issues that were determined in this hearing. While I have considered all of the evidence that met the Rules of Procedure in relation to the cancelling of the Notice, I have only documented that evidence which I relied upon to make findings in this decision.

### Preliminary Findings

The Tenant confirmed that his monetary claim related to compensation for the Landlord's failure to make repairs to the rental unit and for his loss of peaceful and quiet enjoyment of the property. The Notice sought to end the tenancy because of unpaid rent. The Tenant testified that he had not determined the full extent of his monetary claim against the Landlord because he was still waiting for documents to be sent to him by a number of agencies. The Tenant agreed that his monetary claim could not be determined without this evidence.

Rule 2.3 of the Rules of Procedure sets out that in the course of the dispute resolution proceeding, Arbitrators may use their discretion to dismiss unrelated claims contained in a single Application with or without leave to re-apply. Therefore, based on the foregoing, I determined during the hearing that I would only deal with the Tenant's Application to cancel the notice to end tenancy in this hearing. However, the Tenant is at liberty to re-apply for his monetary claim.

### Issue(s) to be Decided

- Has the Tenant applied to cancel the Notice within the time limits stipulated by the Act?
- Has the Tenant established that the Notice ought to be cancelled?
- Is the Landlord entitled to an Order of Possession?

### Background & Evidence

While the Tenant had been occupying this rental unit under a different tenancy with a third party who was not part of these proceedings, the parties agreed that they had entered into a written tenancy agreement on April 4, 2014. The tenancy continued thereafter with the agreement that the Tenant would pay rent in the amount of \$450.00 on the first day of each month. However, the parties agreed that on or around May 2015 the rent amount payable increased to \$500.00. The Tenant paid the Landlord a security deposit of \$225.00 which the Landlord still retains.

The Landlord testified that the Tenant has failed to pay rent since November 2015. The Landlord testified that on January 20, 2016 he served the Tenant personally with the Notice. The Notice shows a vacancy date of January 30, 2016 due to \$2,450.00 payable on January 1, 2016. The Landlord was asked to explain how he had reached the amount documented on the Notice. The Landlord stated that he had reached this

amount because he had calculated it on the basis that the rent was \$450.00 per month, even though it was \$500.00 per month, and that the Tenant had failed to pay for six months of rent before the Notice was issued which included two months in 2014. The Landlord agreed that the total amount of rent outstanding of \$2,700.00 pursuant to his calculations was different to the amount documented on the Notice of \$2,450.00. The Landlord agreed that this was an error in the calculation of the amount of the Notice.

The Tenant confirmed receipt of the Notice but testified that it was received by him on January 22, 2016, which was the date he documented on his Application for more time to cancel the Notice. The Tenant stated that he had a brain injury that prevents him from reading or understanding documents and this is the reason why he applied to dispute the Notice outside of the time limits stipulated by the Act. The Tenant testified that as the Notice was a 10 day Notice, he assumed he had ten days to dispute it. The Tenant stated that he could not take the Notice to his advocate within the time limit as it is difficult to get an appointment with her straight away.

The Tenant disputed the Landlord's testimony and testified that in November 2015, the Landlord left the country and failed to assign an agent to act on his behalf. The Tenant stated that therefore, he was unable to pay the Landlord any rent until he returned to Canada in January 2016. The Tenant testified that on or around January 5, 2016 he gave the Landlord \$1,500.00 for the outstanding three months of rent and therefore there were no rental arrears outstanding at the time the Notice was served to him. The Tenant testified that the Landlord took the money from him and then refused to give him a rent receipt. The Tenant testified that for February and March 2016 the Landlord refused to accept any rent payment as he did not want to re-instate the tenancy.

The Tenant continued to testify that the Landlord had failed to complete a long list of repairs to the rental unit and was engaging in a course of harassment and threats to get him out of the rental unit which in turn was affecting his peaceful and quiet enjoyment of the rental unit. The Tenant testified that the Landlord is a "shitty slumlord" who has breached various sections of the Act. The Tenant testified that he has put in a large amount of money relating to renovations and upgrades to the rental unit. The Tenant testified that the Landlord is also failing to maintain the rental property and lately is only accepting rent in cash because he is avoiding having to pay taxes to the tax agency.

The Landlord denied the Tenant paid him \$1,500.00 in cash and submitted that the Tenant has the Landlord's bank details and could have easily deposited the monies into his account as it is still active. The Tenant confirmed that he had previously deposited rent into the Landlord's bank account for a small period of time, namely for June 2015 to

October 2015 but the Landlord has now changed this method because he is attempting to avoid tax charges.

The Landlord disputed the Tenant's testimony stating that the Tenant could have easily deposited the money into his bank account. The Landlord testified the Tenant has his direct phone number he uses when he leaves the country for any issues the Tenant may have, such as not being able to pay rent. The Landlord testified that the Tenant only pays cash when his rent is late. When the Tenant was asked why he could not pay rent for November 2015, December 2015, and January 2016 into the Landlord's bank account, he testified that his vehicle was broken into and that the Landlord's bank account details had been stolen during the break-in.

### Analysis

In relation to the Notice, I find that the form and contents complied with Section 52 of the Act. In relation to the timing of the Notice, I accept the Tenant's evidence that he had received the Notice on January 22, 2016. However, the Tenant had applied to dispute the Notice on January 28, 2016, being outside of the five day time limit set by Section 47(4) of the Act. However, Section 66 of the Act allows an Arbitrator to extend a time limit imposed by the Act only in exceptional circumstances. In this case I took into consideration that if the Tenant knew about a preexisting injury to his brain, then he could have taken reasonable steps to speak to any third party to explain the Notice which details the five day time limit to dispute the Notice. However, in this case, I accept the Tenant's evidence that he had a brain injury that caused him confusion regarding the time limits imposed by the Act to dispute the Notice. Therefore, I grant the Tenant's Application for more time to cancel the Notice outside of the five day time limit.

Section 26 of the Act requires a tenant to pay rent **whether or not** the landlord complies with the Act unless the tenant has a right to deduct or withhold rent. In this case, I find the Tenant has failed to satisfy me that he has complied with Section 26 of the Act in paying his rent.

The Tenant focused his attention on detailing the breaches of the Act by the Landlord, such as: failing to complete repairs and maintenance to the rental unit; alleged harassment; and failing to assign an agent for the Landlord to act on his behalf in the Landlord's absence. While I make no legal findings on the validity of these allegations, I find the Tenant has disclosed no breach of the Act that would have allowed the Tenant to not pay rent for this tenancy. The Tenant submitted that he paid cash rent for November 2015, December 2015, and January 2016 to the Landlord and was not in rental arrears by the time he was issued the Notice. In this respect, I find the Tenant

only relies on his oral evidence to support his submission that he paid rent. I find this is not sufficient evidence alone to prove that the payment of \$1,500.00 was made in January 2016. I find that the Tenant provided insufficient evidence before me at the time of this hearing that he made attempts to pay rental arrears either by contacting the Landlord or making efforts to obtain the Landlord's bank details after the alleged break into the Tenant's vehicle to deposit the money into his account directly.

While I find the Landlord provided confusing evidence around the rent amount that is payable on the Notice, I find that an incorrect amount of rent on the Notice does not invalidate it. Therefore, I find the Tenant has not satisfied me that the Notice should be cancelled and the Tenant's Application in this respect is dismissed.

Section 55(1) of the Act states that if a tenant makes an Application to dispute a Notice the Arbitrator **must** grant an Order of Possession if the Notice complies with the Act and the tenant's Application is dismissed. As the effective date of the Notice has now passed and no rent has been paid or accepted since the Notice was issued, the Landlord is entitled to a two day order of Possession. If the Tenant fails to vacate the rental unit, the order may be enforced in the Supreme Court of British Columbia as an order of that court. Copies of the order are attached to the Landlord's copy of this decision for service on the Tenant.

### Conclusion

The Tenant's Application to cancel the Notice is dismissed without leave to re-apply. The Landlord is granted an Order of Possession which is effective two days after service on the Tenant. As the tenancy has now ended, the Tenant's Application for the Landlord to make repairs is dismissed as this is now a moot issue. The Tenant's Application for the monetary claim is dismissed with leave to re-apply as this was not heard during these proceedings. This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: March 16, 2016

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Residential Tenancy Branch

