



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: OPR, OPC, FF

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Landlord on May 3, 2016 for an Order of Possession based on cause. The Landlord amended the Application on May 12, 2016 to include a request to also end the tenancy for unpaid rent. The Landlord also applied to recover the filing fee from the Tenant.

Both parties appeared for the hearing and provided affirmed testimony during the hearing. The Landlord submitted a copy of both notices to end tenancy into evidence. No further documentary evidence was provided by the parties prior to this hearing.

The Tenant confirmed receipt of the Landlord’s Application and the Landlord’s amended Application by personal service pursuant to Section 89(1) (a) of the *Residential Tenancy Act* (the “Act”). The hearing process was explained and the parties were given an opportunity to present evidence, make submissions to me, and cross examine the other party on the issues to be decided. Throughout the hearing the parties continually interrupted each other and had to be cautioned about this several times. While both parties provided oral testimony and submissions during the hearing which I have considered, I have only documented that evidence which I relied upon in making findings in this decision as follows.

### Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession?

### Background and Evidence

Both parties agreed that this tenancy for a rental unit in a residential building started in May 2008. The Tenant confirmed that a written tenancy agreement had been signed for this month to month tenancy and that rent in the amount of \$1,050.00 is payable on the first day of each month. The Tenant paid the Landlord a security deposit of \$525.00.

The Landlord testified that the Tenant was personally served with a 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") on March 28, 2016. The 1 Month Notice was provided into evidence and shows a vacancy date of April 28, 2016. The reason for ending the tenancy on the 1 Month Notice is because the Tenant is alleged to have: significantly interfered with or unreasonable disturbed another occupant or the Landlord; seriously jeopardised the health or safety or lawful right of another occupant or the Landlord; and, put the Landlord's property at significant risk.

The Tenant confirmed receipt of the two page 1 Month Notice on March 28, 2016 by personal service. The Tenant explained that she disputed the reasons on the Notice.

The Landlord testified that he receives the Tenant's rent from two separate third party government agencies which is paid directly to him in separate payments of \$494.00 and \$556.00. The Landlord testified that for May 2016 he only received one payment of \$494.00 towards rent from one of the government agencies.

As a result, the Landlord personally served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice"). The 10 Day Notice was provided into evidence and shows an issue date of May 2, 2016 and a vacancy date of May 11, 2016 due to \$556.00 payable on May 1, 2016. The Landlord testified that he personally served this to the Tenant with a witness on May 3, 2016. The 10 Day Notice was not signed by the Landlord.

The Tenant confirmed that she had received the 2 page 10 Day Notice but testified that it was posted to her rental unit door which she retrieved on May 5, 2016. The Tenant confirmed that the 10 Day Notice was dated May 2, 2016 but was not signed by the Landlord. The Tenant confirmed that she knew it had been issued by the Landlord. The Tenant stated that she had instructed the third party government organization to stop paying rent to the Landlord because the Landlord was causing her harassment and that this issue needed to be resolved in this hearing. Until such time it is resolved, the government organization will continue to not make payment to the Landlord.

The Tenant testified that her rental unit was broken into several times during this tenancy and that the Landlord had instructed her to not pay rent because the rental unit belonged to her. The Tenant said that she was in possession of multiple police reports and government documents which prove that the Landlord is not complying with the Act. However, the Tenant had not provided any of this evidence either to the Residential Tenancy Branch or to the Landlord. The Tenant was under the impression that the Residential Tenancy Branch should investigate this matter. However, the Tenant was

informed that the Act does not provide for investigatory powers and each party is responsible to serve evidence prior to the hearing in order to prove their case.

The Landlord disputed the Tenant's testimony stating that it is the Tenant that is the cause of the problem in the residential building and that she has no right to withhold rent.

### Analysis

I first turn my mind to the form and content of the notices to end tenancy. I find the 1 Month Notice complies with Section 52 of the Act. However, the 10 Day Notice does not contain the Landlord's signature as required by Section 52(a) of the Act. Section 68(1) of the Act allows a notice to end tenancy to be amended if it is reasonable and that the person receiving the notice to end tenancy knew or should have known the information that was omitted. Therefore, as the Tenant confirmed that the 10 Day Notice was issued to her by the Landlord, I amend the 10 Day Notice to include the Landlord's signature and find that it complies with Section 52 of the Act.

I find the Tenant was served the 1 Month Notice personally by the Landlord on March 28, 2016 pursuant to Section 88(a) of the Act. I also find that the Tenant confirmed receipt of the 10 Day Notice on her door pursuant to Section 88(g) of the Act on May 5, 2016.

Section 26(1) of the Act requires a tenant to pay rent when it is due under a tenancy agreement whether or not the landlord complies with the Act. Sections 46(4) and (5) of the Act states that within five days of a tenant receiving a 10 Day Notice, a tenant must pay the overdue rent or make an Application to dispute the Notice; if the tenant fails to do either, then they are conclusively presumed to have accepted the 10 Day Notice and must vacate the rental unit on the effective vacancy date of the Notice.

Furthermore, Section 47(4) and (5) of the Act states that within ten days of a tenant receiving a 1 Month Notice, a tenant may make an Application to dispute the 1 Month Notice; if the tenant fails to make the Application, then they are conclusively presumed to have accepted the 1 Month Notice and must vacate the rental unit on the effective vacancy date of the Notice.

There is no evidence before me that the Tenant disputed the notices to end tenancy or has paid the rent amount detailed on the 10 Day Notice. The Act does not allow a tenant to dispute a notice to end tenancy through oral evidence during a hearing. Furthermore, I find the Tenant has failed to establish that she has authority under the

Act to not pay rent for this tenancy. Therefore, pursuant to both notices to end tenancy, I find the Tenant is conclusively presumed to have accepted the tenancy ended on the effective vacancy dates pursuant to the notices to end tenancy.

As these effective vacancy dates have now passed and the Tenant is in rental arrears, the Landlord is entitled to an Order of Possession which is effective two days after service on the Tenant. This order must be served on the Tenant and can then be enforced in the Supreme Court of British Columbia as an order of that court if the Tenant fails to vacate the rental unit.

As the Landlord has been successful in his Application, the Landlord is also entitled to recover from the Tenant the **\$100.00** filing fee for the cost of this Application. This relief may be obtained by deducting \$100.00 from the Tenant's security deposit pursuant to Section 72(2) (b) of the Act.

### Conclusion

The Tenant failed to dispute the notices to end tenancy and has failed to pay rent. Therefore, the Landlord is granted an Order of Possession effective two days after service on the Tenant. The Landlord may recover the filing fee from the Tenant's security deposit.

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: June 01, 2016

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Residential Tenancy Branch