



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      Landlord:    OPL MND MNR FF  
                         Tenant:        CNR O

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “*Act*”).

The Landlord’s Application was received at the Residential Tenancy Branch on June 6, 2016 (the “Landlord’s Application”).

The Landlord applied for the following relief pursuant to the *Act*: an order of possession for landlord’s use of property; a monetary order for damage to the rental unit; a monetary order for unpaid rent; and an order permitting the Landlord to recovery the filing fee.

The Tenant’s Application was received at the Residential Tenancy Branch on June 10, 2016, and was updated to include the Landlord’s postal code on June 15, 2016 (the “Tenant’s Application”).

The Tenant applied for the following relief pursuant to the *Act*: an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent, dated June 7, 2016 (the “10 Day Notice”); and other unspecified relief.

The Landlord attended the hearing on his own behalf. The Tenant also attended the hearing on his own behalf, and was assisted by J.S., an articulated student. All parties giving evidence provided their solemn affirmation.

The Landlord confirmed receipt of the Tenant’s Application and evidence. The Tenant stated he received the Landlord’s Application materials, but not the Landlord’s evidence.

The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

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.

### Preliminary and Procedural Matters

The Tenant testified that he did not receive the Landlord's documentary evidence. However, the Landlord asserted his evidence was submitted to the Residential Tenancy Branch and was served on the Tenant. However, no evidence appeared in the paper file or the Residential Tenancy Branch case management system. The Landlord was asked to submit the evidence upon which he relies to me by 12:00 noon on this date, and also to submit the evidence to J.S., the articulated student assisting the Tenant.

On behalf of the Tenant, J.S. objected to my consideration of the evidence submitted by the Landlord at this stage of the proceeding.

The Landlord's evidence was received at the Residential Tenancy Branch at 11:40 a.m. Upon review of the evidence submitted by the Landlord, I have considered only the 2 Month Notice to End Tenancy for Landlord's Use of Property, dated March 30, 2016, as corroboration of the Tenant's previous application, described below. The remainder of the Landlord's evidence has not been considered.

Following the hearing, J.S. submitted an email to the Residential Tenancy Branch to advise he had not received the Landlord's evidence at 12:00 noon as discussed during the hearing. However, I conclude this is not prejudicial to the Tenant as the 2 Month Notice was admitted to be received by the Tenant in a previous application filed by the Tenant, described below.

Another matter involves the nature of the orders being sought by the Landlord. Rule 2.3 of the Residential Tenancy Branch Rules of Procedure permit an arbitrator to exercise discretion to dismiss unrelated claims with or without leave to reapply. The most important issue in the Applications before me was whether or not the tenancy continues. The remainder of the relief being sought by the Landlord is for compensation for damage to the property or for unpaid rent.

Accordingly, I find it appropriate to exercise my discretion to dismiss the Landlord's claim for an order of possession. The Landlord will have leave to reapply for the monetary orders he seeks at a later date.

### Issues to be Decided

1. Is the Landlord entitled to an order of possession?
2. Is the Landlord entitled to recovery the filing fee?
3. Is the Tenant entitled to an order cancelling the 10 Day Notice?

### Background and Evidence

There was no written tenancy agreement between the parties. However, the oral testimony of the Tenant was that the tenancy began in or about 2000, and has continued on a month-to-month basis ever since. Rent in the amount of \$650.00 is due on the first day of each month. The Tenant did not pay a security deposit. The Landlord did not dispute the terms of the tenancy as described by the Tenant.

### The Landlord's Claims

The Landlord provided oral testimony confirming he recently purchased the rental property from the previous owner, and took possession on June 15, 2016.

The Landlord has requested an order of possession based on a 2 month notice to end tenancy he stated was issued by the former owner of the rental property in March 2016.

The Tenant denied he was ever served with a 2 month notice to end tenancy by the previous owner. He also denied ever meeting the Landlord.

However, during his oral testimony, the Landlord referred me to a related dispute resolution proceeding commenced by the Tenant. The file number of the related proceeding is referenced on the cover page of this Decision for convenience.

Upon review of the evidence submitted by the Tenant in the related proceeding, it became apparent the Tenant commenced dispute resolution proceedings against the previous owner by filing an Application for Dispute Resolution, dated April 15, 2016 (the "April Application").

The file materials related to the April Application included a copy of a 2 Month Notice to End Tenancy for Landlord's Use of Property, dated March 30, 2016 (the "2 Month Notice"). The April Application form also indicated the 2 Month Notice was received by the Tenant on April 15, 2016.

### The Tenants' Claims

The Tenant disputed the 10 Day Notice, a copy of which was submitted with his evidence.

For the reasons described below, it is not necessary for me to consider the Tenant's Application further.

### Analysis

#### Landlord's Claims

I find the Landlord has demonstrated the previous owner served the 2 Month Notice on the Tenant, and that it was received by the Tenant on April 15, 2016. This finding is based on the documentary evidence submitted by the Tenant as part of the April Application, as corroborated by the documentary evidence submitted by the Landlord.

On receipt of a notice to end tenancy pursuant to section 49 of the *Act*, a Tenant has 15 days to dispute the notice. Failure to do so leads to the conclusive presumption the Tenant has accepted the end of the tenancy.

Although the Tenant commenced dispute resolution proceedings against the previous owner on April 15, 2016, neither party attended the hearing on May 19, 2016. Accordingly, the Tenant's April Application was dismissed with leave to reapply. The Tenant did not reapply to dispute the 2 Month Notice.

In light of the above, the Tenant is out of time to dispute the 2 Month Notice. He is conclusively presumed to have accepted the tenancy ended on the effective date of the 2 Month Notice, but continues to reside at the rental property.

Therefore, pursuant to section 55 of the *Act*, I grant the Landlord an order of possession. The order of possession will be effective two (2) days after service on the Tenant.

I decline to grant the Landlord recovery of the filing fee.

### Tenant's Claims

In light of my findings above, it is not necessary for me to consider the Tenant's Application for an order cancelling the 10 Day Notice.

Accordingly, the Tenant's Application is dismissed.

***NOTE: As noted above, I have exercised my discretion to sever the Landlord's monetary claims, with leave to reapply at a later date, pursuant to Rule of Procedure 2.3. However, I remind the parties of their rights and obligations pursuant to sections 49 and 51 of the Act. The parties are encouraged to negotiate a resolution to the payment of rent in accordance with the Act. Failing which, the Tenant is at liberty to apply for compensation pursuant to these provisions.***

### Conclusion

The Landlord is granted an order of possession, which will be effective two (2) days after service on the Tenant. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Tenant's Application is dismissed.

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: July 12, 2016

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Residential Tenancy Branch