



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      Landlord: OPR, MNR, MNSD, FF  
Tenant: CNR, CNL

### Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel two notices to end tenancy. At the outset of the hearing the landlord requested that his file be heard at the same time as this file.

The parties agreed the landlord had served his documents for that hearing to the tenant. While the landlord's Application dealt solely with a 10 Day Notice to End Tenancy for Unpaid Rent issued after the tenant had submitted her Application to dispute a 2 Month Notice and another 10 Day Notice the parties agreed to the following:

1. The landlord's Application set to be heard on September 1, 2016 would be heard as a Cross Application to the tenant's current Application;
2. The tenant's Application would be amended to include a request to cancel the 10 Day Notice that was subject to the landlord's Application; and
3. The hearing scheduled for September 1, 2016 would be cancelled.

The hearing was conducted via teleconference and was attended by the landlord; the tenant and the tenant's witness.

I note that Section 55 of the *Residential Tenancy Act (Act)* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

To be clear, for the purposes of this hearing the tenant has applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent issued on June 3, 2016 and a 2 Month Notice to End Tenancy for Landlord's Use of Property issued on May 29, 2016. The landlord had applied for an order of possession based on a 10 Day Notice to End Tenancy for Unpaid Rent issued on July 1, 2016.

As a result, and pursuant to the above noted agreement and Section 55 of the *Act*, the landlord may be entitled to an order of possession should anyone of the three Notices

be valid and enforceable or I dismiss the tenant's Application to cancel any one of the three Notices.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent or for landlord's use of property; to a monetary order for unpaid rent; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 46, 49, 55, 67, and 72 of the *Act*.

It must also be decided if the tenant is entitled to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property; a 10 Day Notice to End Tenancy for Unpaid Rent issued on June 3, 2016; and/or a 10 Day Notice to End Tenancy for Unpaid Rent issued on July 1, 2017, pursuant to Sections 46 and 47 of the *Act*.

### Background and Evidence

The parties agreed the tenancy began on December 1, 2015 as a month to month tenancy for a monthly rent of \$1,500.00 due on the 1<sup>st</sup> of each month with a security deposit of \$750.00 paid.

Between the two parties they have submitted into evidence the following relevant documents:

- a copy of a 2 Month Notice to End Tenancy for Landlord's Use of Property issued on May 29, 2016 with an effective vacancy date of July 31, 2016 citing the rental unit will be occupied by the landlord or a close family member of the landlord;
- a copy of a 10 Day Notice to End Tenancy for Unpaid Rent issued by the landlord on June 3, 2016 with an effective vacancy date of June 13, 2016 citing the tenant owed the landlord \$1,560.00 in unpaid rent; and
- a copy of a 10 Day Notice to End Tenancy for Unpaid Rent issued by the landlord on July 1, 2016 with an effective vacancy date of July 11, 2016 citing the tenant owed the landlord \$1,500.00 in unpaid rent.

The tenant initially testified that she received the 2 Month Notice on May 29, 2016 but later changed her testimony to say that the landlord served the notice on May 29, 2016 to her 16 year old son but that she did not receive it until the following day because she did not return until late on May 29, 2016. The tenant confirmed she received this Notice on May 30, 2016.

The tenant also acknowledged receipt of the 10 Day Notice issued on June 3, 2016 on the same date that it was issued. I note that the tenant submitted her Application for Dispute Resolution seeking to cancel the 2 Month Notice and the June 3, 2016 10 Day Notice on June 15, 2016.

The tenant agreed that she had not paid the rent before the June 3, 2016 Notice was issued. The tenant submitted that her cheque from “the Ministry” had not been received so she had to get a replacement cheque. She, however, did not provide any documentary evidence to confirm any delays in her cheque from “the Ministry”.

The parties agreed that the tenant paid the landlord \$1,500.00 on June 10, 2016 but that \$60.00 remains outstanding from May 2016. The tenant submitted she attempted to pay the additional \$60.00 but the landlord would not accept it.

The parties also agreed the tenant did not pay rent for the month of July 2016. The tenant submitted that she did not pay rent for the month of July 2016 because it should be her “free month” based on the 2 Month Notice and the requirement for the landlord to pay compensation when issuing such a notice.

### Analysis

Section 49 of the *Act* allows a landlord to end a tenancy if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. Section 49(8) of the *Act* stipulates that a tenant may dispute a notice issued under Section 49 by submitting an Application for Dispute Resolution within 15 days of receiving the notice. Section 49(9) states that if the tenant does not submit an Application for Dispute Resolution within 15 days the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit.

While the tenant’s testimony provided to versions of when she received the 2 Month Notice issued under Section 49 I accept the tenant did not receive the Notice until May 30, 2016. As such, I find the tenant had until Jun 14, 2016 to file her Application seeking to cancel the 2 Month Notice. As the tenant did not submit her Application until June 15, 2016 I find the tenant has failed to file within the required 15 days and she is conclusively presumed to have accepted the end of the tenancy based on the 2 Month Notice.

Section 46 of the *Act* states a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy on a date that is not earlier than 10 days after the date the tenant receives the notice. A notice under this section must comply with Section 52 of the *Act*.

Section 46(4) allows the tenant to either pay the rent or file an Application for Dispute Resolution to dispute the notice within 5 days of receipt of the notice.

Section 46(5) states that if a tenant who has received a notice under this section does not pay the rent or make an Application for Dispute Resolution to dispute the notice within the allowed 5 days the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit.

In addition to my finding above, while I accept the tenant paid the rent in full for the month of June 2016 she did not include the \$60.00 owed from May 2016 and she did not make this payment until June 10, 2016. Because the tenant acknowledged receiving the 10 Day Notice on June 3, 2016 she only had until June 8, 2016 to either pay the full amount owed or file her Application for Dispute Resolution seeking to cancel the Notice.

As the tenant made her payment for \$1,500.00 on June 10, 2016 and did not submit her Application for Dispute Resolution until June 15, 2016 I find the tenant is also conclusively presumed to have accepted the end of the tenancy based on the June 3, 2016 10 Day Notice to End Tenancy and should have vacated the rental unit on the effective date of that Notice.

As to the 10 Day Notice to End Tenancy for Unpaid Rent issued on July 1, 2016 I find the landlord was not allowed to issue such a notice until July 2, 2016 as rent was due on the July 1, 2016 and Section 46 only allows a notice to be issued the day after rent is due. As such, I cancel the 10 Day Notice to End Tenancy for Unpaid Rent issued on July 1, 2016.

However, based on the tenant's failure to apply within the required timeframes for both the 2 Month Notice issued on May 29, 2016 and the 10 Day Notice issued on June 3, 2016 I find the notices are valid and enforceable.

Section 52 of the *Act* requires that any notice to end tenancy issued by a landlord must be signed and dated by the landlord; give the address of the rental unit; state the effective date of the notice, state the grounds for ending the tenancy; and be in the approved form.

I find the 2 Month Notice to End Tenancy for Landlord's Use of Property issued by the landlord on July 31, 2016 complies with the requirements set out in Section 52.

Section 55(1) of the *Act* states that if a tenant applies to dispute a landlord's notice to end tenancy and their Application for Dispute Resolution is dismissed or the landlord's notice is upheld the landlord must be granted an order of possession if the notice complies with all the requirements of Section 52 of the *Act*.

While I noted above the tenant should have also vacated the rental unit by June 13, 2016 I grant the order of possession based on the 2 Month Notices as this hearing was conducted after that effective date.

As to the landlord's claim for rent in the amount of \$60.00 I find the tenant agrees that she owes the landlord \$60.00 for the month of May 2016 and as such I award the landlord this amount.

Section 51 of the *Act* states that a tenant who receives a notice to end tenancy under Section 49 [landlord's use of property] is entitled to receive from the landlord on or

before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement. I note that this amount is owed to the tenant regardless of any other events occurring later in the tenancy.

As to the landlord's claim for rent for the month of July 2016, in the amount of \$1,500.00 I find the tenant is entitled to this amount as compensation for receiving the 2 Month Notice to End Tenancy for Landlord's Use, pursuant to Section 51 of the *Act*.

While I recognize the landlord has until the end of the tenancy to pay this amount to the tenant, I find that because of the date of this hearing is only 6 days from the end of the tenancy, I will not order the tenant pay this amount of rent to the landlord. I dismiss this portion of the landlord's claim.

### Conclusion

I find the landlord is entitled to an order of possession effective **July 31, 2016 after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$160.00** comprised of \$60.00 rent owed and the \$100.00 fee paid by the landlord for this application.

I order the landlord may deduct this amount from the security deposit held in the amount of \$750.00 in satisfaction of this claim leaving a balance of \$590.00 to be dispensed in accordance with the *Act* at the end of the tenancy.

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 25, 2016

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Residential Tenancy Branch

