



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MT   CNR   FF

### Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, received at the Residential Tenancy Branch on July 11, 2016 (the "Application").

The Tenant applied for the following relief pursuant to the *Residential Tenancy Act* (the "Act"): an order granting more time to make an application to cancel a notice to end tenancy; an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated July 5, 2016 (the "10 Day Notice"); and an order permitting recovery of the filing fee.

The Tenant appeared at the hearing on his own behalf. The Landlord was represented at the hearing by J.W. Both parties provided their solemn affirmation, and were given the opportunity to present their evidence orally and in written and documentary form, and 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

At the outset of the hearing, the Tenant acknowledged he does not require more time to bring the application as his application was made in time, both parties had sufficient opportunity to submit documentary or other evidence, and both parties were in attendance. Accordingly, I have not considered this aspect of the Tenant's claim further in this Decision.

### Issues to be Decided

Is the Tenant entitled to an order cancelling the 10 Day Notice?

Is the Tenant entitled to recover the filing fee?

### Background and Evidence

The parties confirmed the tenancy began on June 1, 2016, on a month-to-month basis. Rent in the amount of \$600.00 is due on the first day of each month. The Tenant paid the Landlord a security deposit in the amount of \$300.00.

On behalf of the Landlord, J.W. provided oral testimony regarding the payment of rent. He stated the Tenant paid rent for the month of June, but has not paid rent for the months of July and August. Although J.W. acknowledged September rent was not due at the time of the hearing, he also noted it has not yet been received.

In reply, the Tenant acknowledged rent has not been paid as alleged by J.W. According to the Tenant, he has been unable to pay rent because he was robbed due to poor security at the rental property and could not afford rent. No further explanation was provided.

### Analysis

In light of the oral and documentary evidence submitted by the parties, and on a balance of probabilities, I make the following findings:

Section 26 of the *Act* requires that tenants pay rent when due “whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent.”

The Tenant conceded he has not paid rent as claimed by the Landlord, and I find there is insufficient evidence before me to find the Tenant had a right under the *Act* to deduct all or a portion of the rent.

Further, section 46 of the *Act* permits a landlord to end a tenancy if rent remains unpaid on any day after the day it is due. Having determined that rent was not paid when due, I conclude that the Tenant’s Application must be dismissed and the 10 Day Notice upheld.

When a tenant's application for dispute resolution is dismissed and the notice complies with section 52 of the *Act*, section 55 of the *Act* requires that I grant an order of possession to the landlord.

On review of the 10 Day Notice, I find it complies with section 52 of the *Act*. Therefore, the Landlord is entitled to an order of possession, which will be effective one (1) day after service upon the Tenant.

As the Tenant has not been successful, I decline to grant a monetary order for recovery of the filing fee.

### Conclusion

The Tenants' application is dismissed, without leave to reapply, and the 10 Day Notice is upheld.

By operation of section 55 of the *Act*, I grant the Landlord an order of possession. The order of possession will be effective one (1) day after service upon the Tenant. Should the Tenant fail to comply with the order of possession, it may be filed in and enforced as an order of the Supreme Court of British Columbia.

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: August 31, 2016

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Residential Tenancy Branch