



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding HOGOON HOLDINGS  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR   FF

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution received at the Residential Tenancy Branch on August 5, 2016, and updated on August 10, 2016 (the "Application").

The Tenant applied for the following relief pursuant to the *Residential Tenancy Act* (the "Act"): an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated June 21, 2016 (the "10 Day Notice"); and an order granting recovery of the filing fee.

The Tenant attended the hearing on his own behalf. The Landlord was represented at the hearing by R.N. and H.C.

The Tenant testified that the Notice of a Dispute Resolution Hearing, and the evidence upon which he intended to rely, were served on the Landlord by giving a copy to the Landlord's agent. Although the Tenant could not remember when the documents were served, he stated it was about a month-and-a-half ago. The Landlord's agent acknowledged receipt.

The Landlord's evidence was received at the Residential Tenancy Branch on September 21, 2016. However, the Tenant denied receipt. In the absence of documentary evidence confirming service of the Landlord's documentary evidence, it has not been considered in this Decision.

The parties were provided with 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.

### Issues to be Decided

1. Is the Tenant entitled to an order cancelling the 10 Day Notice?
2. Is the Tenant entitled to recover the filing fee?

### Background and Evidence

Although a written tenancy agreement was not submitted with the parties' documentary evidence, the terms of the tenancy were summarized by an Adjudicator in a decision dated July 18, 2016. A copy of the Adjudicator's decision was submitted into evidence. Based on a written tenancy agreement, the Adjudicator noted the tenancy began on March 1, 2015. Rent in the amount of \$1,000.00 per month was due on the first day of each month.

The Landlord's agent testified that rent has not been paid for the months of June, July, August and September 2016. He stated that rent is currently outstanding in the amount of \$4,000.00.

The Tenant acknowledged he has not paid rent as alleged, but testified it is because BC Hydro was disconnected. The Landlord responded by stating that issue is between the Tenant and BC Hydro.

The Tenant also advised that he and his children have been living elsewhere since June 2016 but would like to return. The Tenant also state he has tried to pay rent but that it was not accepted by the Landlord.

### Analysis

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

Section 26(1) of the *Act* states:

“A tenant must pay rent when it is due under the tenancy agreement, 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.”

In this case, the parties confirmed, and I find, that rent has not been paid since June 1, 2016. As of the date of this Decision, \$4,000.00 remains outstanding. Further, I find there is insufficient evidence the Tenant had a right under the *Act* to deduct all or a portion of the rent. Accordingly, the Tenant’s Application is dismissed.

When a tenant’s application to cancel a notice to end tenancy is dismissed, section 55 of the *Act* requires that I issue an order of possession in favour of the landlord if the notice complies with section 52 of the *Act*. Having reviewed the 10 Day Notice, I find it complies with section 52 of the *Act*. Accordingly, by operation of section 55 of the *Act*, I grant the Landlord an order of possession, which will be effective two (2) days after it is served on the Tenant.

As the Tenant’s Application has not been successful, I decline to award recovery of the filing fee.

### Conclusion

The Tenant’s Application is dismissed.

By operation of section 55 of the *Act*, I grant the Landlord 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.

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: September 28, 2016

