



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPC, OPR, MNR, FF, CNC, CNR

### Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- an order of possession for cause and for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46; and
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47.

The landlord's agent (the landlord) attended the hearing via conference call and provided undisputed affirmed testimony. The tenant did not attend. The landlord stated that the tenant was served with the landlords' notice of hearing package and the submitted documentary evidence via personal service on August 2, 2016 and the amended application for dispute and additional documentary evidence via Canada Post Registered Mail on August 22, 2016.

The landlord had also filed an amended application for dispute on August 4, 2016 which the landlord was unable to provide any details on service to the tenant. As such, this portion of the landlords' application is dismissed with leave to reapply for lack of service details.

The landlord confirmed receipt of the tenant's notice of hearing package and stated that she was aware of the tenant's application for dispute details.

The landlord stated that the notice of hearing package served to the tenant via Canada Post Registered Mail on August 22, 2016 was "unclaimed" after repeated attempts at service were made and was being returned to the landlord. The landlord has provided a copy of the Canada Post Customer Receipt Tracking number as confirmation.

I accept the undisputed affirmed evidence of the landlord and find that both the landlord and the tenant were both properly served with the submitted notice of hearing and the amended application for dispute package(s) as per sections 88 and 89 of the Act. Both parties are deemed to have been properly served as per section 90 of the Act.

At the outset the landlord clarified that she was seeking to cancel the 1 Month Notice dated July 16, 2016 and the 10 Day Notice dated July 29, 2016. As such no further action is required for these two notices.

After waiting 31 minutes past the start of the scheduled hearing time, the tenant's application to cancel a 1 Month Notice dated July 13, 2016, a 10 Day Notice dated July 29, 2016 and a 1 Month Notice dated July 29, 2016 are dismissed without leave to reapply as the tenant has failed to attend and the landlord has attended in response.

It was clarified with the landlord that the hearing shall proceed on the landlords' request for an order of possession based upon a 1 Month Notice dated July 29, 2016 and the 10 Day Notice dated August 11, 2016.

#### Issue(s) to be Decided

Are the landlords entitled to an order of possession for cause and/or unpaid rent?  
Are the landlords entitled to a monetary order for unpaid rent and recovery of the filing fee?

#### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the landlords' claims and the tenant's cross claim and my findings around each are set out below.

The landlord provided undisputed affirmed testimony that although there was no signed tenancy agreement the tenancy details were as follows:

Tenancy started January 1, 2002

Monthly Rental Rate is \$1,100.00 payable on the 1<sup>st</sup> day of each month.

No security deposit was paid.

The landlord provided undisputed affirmed testimony that the tenant was served with the 1 Month Notice dated July 29, 2016 in person on July 29, 2016. The 1 Month Notice sets out an effective end of tenancy date of August 29, 2016 and 1 reason for cause listed as:

*Tenant is repeatedly late paying rent.*

The landlord states that the tenant is in arrears totalling, \$3,880.00 as of the date of this hearing:

May 2016	\$560.00
June 2016	\$560.00
July 2016	\$560.00
August 2016	\$1,100.00
September 2016	\$1,100.00

The landlord also provided undisputed affirmed testimony that the tenant was served with the 10 Day Notice dated August 11, 2016 by posting it to the rental unit door. The 10 Day Notice states that the tenant failed to pay rent of \$2,780.00 that was due on August 1, 2016 and sets out an effective end of tenancy date of August 21, 2016.

The landlord stated that as of the date of this hearing the tenant has not paid any of the above noted rental arrears and still occupies the rental unit.

### Analysis

In an application to cancel a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met.

The landlord has provided uncontested and affirmed testimony that the tenant has failed to pay all of the rent for May 2016, June 2016, July 2016, August 2016 and September

2016. Furthermore, and pursuant to subsection 47(5), the 1 Month Notice states that the tenant had ten days, from the date of service of that notice, to apply for dispute resolution or the tenant would be presumed to have accepted that the tenancy would end on the effective date of the 1 Month Notice. The tenants did not apply to dispute the 1 Month Notice within ten days from the date of service. For the reasons outlined above, I find that the 1 Month Notice is validly issued.

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

The landlord provided uncontested affirmed evidence that the tenant failed to pay the outstanding rent within five days of receiving the 10 Day Notice. The tenant has not made application pursuant to subsection 46(4) of the Act within five days of receiving the 10 Day Notice. In accordance with subsection 46(5) of the Act, the tenant's failure to take either of these actions within five days led to the end of his tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by August 21, 2016. As that has not occurred, I find that the landlord is entitled to a two-day order of possession.

The landlord has provided affirmed and uncontested testimony that the tenant has unpaid rental arrears totaling \$3,880.00. I find that the landlord has proven his entitlement to the rent arrears. The landlord is entitled to a monetary order for the unpaid rent.

The landlord is also entitled to recovery of the \$100.00 filing fee.

### Conclusion

The tenant's application is dismissed without leave to reapply.

The landlord is granted an order of possession for both cause and for unpaid rent as claimed by the landlord.

The landlord is provided with a formal copy of an order of possession. Should the tenant(s) fail to comply with this order, this order may be filed and enforced as an order of the Supreme Court of British Columbia.

The landlord is granted a monetary order for \$3,980.00.

The landlord is provided with a formal copy of the monetary order. Should the tenant(s) fail to comply with these orders, these orders may be filed in the Small Claims Division of the Provincial Court and enforced as orders of that Court.

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 20, 2016

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Residential Tenancy Branch