



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

For the landlord – OPR, MNR, MNSD, FF

For the tenant – MT, CNR, CNC, MNDC, LAT, RR, FF

### Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The landlord applied for Order of Possession for unpaid rent or utilities; for a Monetary Order for unpaid rent or utilities; for an Order permitting the landlord to keep all or part of the tenant's security and pet deposit; and to recover the filing fee from the tenant for the cost of this application. The tenant applied for more time to file an application to cancel the Notice's to End Tenancy and applied to cancel a 10 Day Notice to End Tenancy for unpaid rent and a One Month Notice to End Tenancy for cause. The tenant also applied for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; for an Order to authorize the tenant to change the locks of the rental unit; for an Order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided; and to recover the filing fee from the landlord for the cost of this application.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. Neither party called a witness during the hearing. 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 Issues

RTB Rules of Procedure 2.3 states that “if in the course of a dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may dismiss unrelated disputes contained in a single application with or without leave to reapply.” In this regard I find that not all the claims on the tenant’s application are sufficiently related to the main issue to be dealt with together. I therefore will deal with the tenant’s application for more time to cancel the Notice’s to End Tenancy and to cancel the 10 Day Notice to End Tenancy for unpaid rent or utilities and the One Month Notice to End Tenancy for cause. I will not deal with the remaining sections of the tenant’s claim at this hearing.

### Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession for unpaid rent or utilities?
- Is the landlord entitled to a Monetary Order for unpaid rent or utilities?
- Is the landlord permitted to keep all or part of the tenant’s security or pet deposit?
- Has the tenant established an extraordinary reason why she filed her application to cancel the Notices to End Tenancy late?
- If so is the tenant entitled to an Order to cancel the One Month Notice to End Tenancy for cause and the 10 Day Notice to End Tenancy for unpaid rent?

### Background and Evidence

The parties agreed that this month to month tenancy started on March 28, 2015. Rent for this unit was \$1,400.00 per month and increased to \$1,440.60 per month on May 01, 2016 by proper Notice. The tenant paid a security deposit of \$700.00 and a pet deposit of \$700.00 in April, 2015.

### **The landlord's application**

The landlord testified that the tenant failed to pay rent for August, 2016 on the day it was due. The landlord testified that the tenant gave the landlord a cheque for \$1,372.50 on August 01, 2016, even though the tenant was made aware that the landlord did not want to accept rent payments by cheque. The landlord went to the tenant's bank to cash this cheque and was told that they could not honour the cheque due to insufficient funds. The landlord testified that the tenant's bank would not put anything in writing to this effect.

The landlord testified he then served the tenant with a 10 Day Notice to End Tenancy for unpaid rent and utilities. This Notice indicated that there was \$1,440.60 in unpaid rent and \$32.35 in unpaid utilities. The Notice has an effective date of August 12, 2016. The landlord testified that he spoke to the tenant and she said all she is required to do is to give the landlord a cheque for the rent. The tenant also told the landlord that he must pay the cheque into his own account but the landlord agreed he did not do this as the tenant's own bank had already said there were insufficient funds to honor the cheque.

The landlord testified that the tenant offered the landlord a rent cheque for September, 2016; however, the landlord did not accept this as the tenant's rent cheque for August had bounced. The landlord testified that no rent has been offered for October, 2016.

The landlord testified that there are three homes on the property. The landlord receives one water bill for the entire property and each home as their own meter attached which the landlord reads to calculate the water usage of each of the homes. The landlord then provides the previous and current meter reading in writing to the tenants and calculates their share of the water bill. This tenant was provided her invoice for her share of the water bill on May 26, 2016 for \$32.35. Currently this amount remains unpaid by the tenant. The landlord seeks a Monetary Order to recover \$32.35.

The landlord requested an Order of Possession to take effect as soon as possible and a Monetary Order to recover the unpaid rent for August, September and October, 2016

and unpaid utilities. The landlord requested an Order to permit him to keep the security and pet deposit to offset against the unpaid rent and utilities.

The tenant disputed the landlord's claims. The tenant testified that she gave the landlord her rent cheque for August on August 01, 2016 after seeking advice from the RTB about how she can pay her rent. The tenant testified that at first the landlord did not want to accept the rent cheque but did accept it and said that it had better not bounce or the tenant would be evicted. The landlord then informed the tenant that her bank refused to cash the cheque but the landlord has provided no evidence to show he attempted to cash it, the tenant's bank has not marked the cheque as NSF and the money was in the tenant's bank account to cover the cheque. Furthermore, the landlord did not attempt to pay the cheque into his own bank account.

The tenant testified that she contacted her branch manager who remembered the landlord coming into the tenant's bank and she informed the tenant that the landlord was told to deposit the cheque into his own bank account. The tenant later wrote to the landlord concerning this. The tenant testified that on September 01, 2016 she attempted to give the landlord her rent cheque for September but the landlord refused to accept it. The tenant agreed she has not paid October's rent.

The tenant testified that the reason the rent cheque for August was for \$1,372.35 was because at a previous hearing held on July 14, 2016 the tenant was awarded her filing fee of \$100.00 and instructed to deduct this from her next rent payment. The tenant's rent for August was therefore \$1,340.00 and the additional amount of \$32.35 was for the water bill. The tenant agreed that she did not realize that her rent had increased to \$1,440.60 in May, 2016 and she has not paid the extra \$0.60 each month and the landlord has never mentioned this to the tenant so the tenant assumed rent was \$1,440.00.

### **The tenant's application**

The tenant testified that she was served with a One Month Notice To End Tenancy on July 29, 2016 in person and a 10 Day Notice to End Tenancy on August 02, 2016 in person. The tenant testified that she has to undergo physiotherapy and as the first week of August had a long weekend she had to cram all her physiotherapy into the week. As the tenant is then bedridden after her physiotherapy she was late filing her application to dispute the Notices. The tenant agreed that this is not an extraordinary reason why she was late.

The tenant seeks to cancel the One Month Notice to End Tenancy and the 10 Day Notice to End Tenancy as the landlord is just harassing the tenant. Furthermore with regard to the 10 Day Notice the rent was paid to the landlord but he did not put the cheque in his account and did not accept the second cheque. The water bill was also paid in August.

The landlord testified that he knows the tenant is on disability yet she is working at a local hotel.

The tenant testified that she does not work at the hotel. The hotel is owned by friends and they let the tenant use the hotel laundry facilities as the landlord has not repaired the tenant's washer. The tenant also goes there to use the pool and hot tub for her therapy.

### Analysis

After careful consideration of the testimony and documentary evidence before me and on a balance of probabilities I find as follows:

With regard to the landlord's application for an Order of Possession for unpaid rent or utilities; I find the tenant had paid a cheque to the landlord on August 01, 2016 for \$1,372.35. The tenant was entitled to deduct \$100.00 from her rent as ordered at the previous hearing held on July 14, 2016. This meant the rent owed for August was

\$1,340.60. The tenant also paid \$32.35 for her water usage. This left an outstanding balance of rent owed of \$0.60.

I am not satisfied from the evidence before me that the landlord made every attempt to collect the money from this rent cheque. The landlord testified that the tenants own bank said there were insufficient funds; the tenant testified that the funds were in her bank and the landlord should have put the cheque into his own account and failed to do so. It is important to note that where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence the party with the burden of proof has not met the onus to prove their claim and the claim fails.

I am not persuaded by the landlord's argument that the tenant's rent cheque could not be honoured. Consequently, I find that at the time the 10 Day Notice was served upon the tenant the only unpaid rent was \$0.60 for August, 2016 as the landlord has insufficient evidence to show that he made every attempt to collect the rent and utilities paid by the tenant through her cheque. With this in mind as the landlord has not raised the issue of the additional \$0.60 rent that the tenant failed to pay since the rent increase in May, 2016 I would not be prepared to issue an Order of Possession based on that as the presumption would be that the landlord accepted the rent as \$1,440.00 for the preceding 4 months without informing the tenant that her rent was \$0.60 short since May, 2016. I therefore find the 10 Day Notice, at the time it was issued, had no force or effect and is hereby cancelled regardless of the fact that the tenant filed her application late.

With regard to the landlord's application to recover unpaid rent for August, September and October, 2016. Neither party made mention of the evidence provided by the landlord that the tenant paid \$500.00 in cash on August 10, 2016. I therefore find at this time the unpaid rent for August is \$840.60 and the unpaid rent for September is \$1,440.60 which included the additional \$0.60 for August and September, 2016. While I find the tenant did make every attempt to pay this rent, it was the landlord's refusal to

pay the August rent cheque into his account and his refusal to accept the cheque offered for September that caused these rent arrears. However, the fact remains that the tenant still owes this rent and therefore I find the landlord is entitled to recover this from the tenant to an amount of **\$2,281.20**.

I further find that the tenant had paid the money owed for the water bill of **\$32.35**. As this was included in the cheque for August's rent then as this has not been collected by the landlord the tenant must pay this amount to the landlord and it will also be included in a Monetary Order.

With regard to the landlord's claim for October's rent, I find the tenant agreed she has not yet paid October's rent on the day it was due and therefore in accordance with s. 26 of the *Act*, the tenant should have paid rent for October on October 01, 2016 and failed to do so. I therefore find the landlord is entitled to recover October's rent of **\$1,440.60**.

With regard to the tenant's application for more time to file an application to cancel the One Month Notice to End Tenancy for cause; I accept that the landlord served the tenant with a One Month Notice to End Tenancy on July 29, 2016 in person. Therefore, the tenant had 10 days from July 29, 2016 or until August 08, 2016 to file an application to dispute the Notice. The tenant filed her application on August 12, 2016 which was 14 days after being deemed to have received the Notice.

Section 66(1) of the *Residential Tenancy Act* states:

**Director's orders: changing time limits**, and provides in part as follows:

**66** (1) *The director may extend a time limit established by this Act only in exceptional circumstances, other than as provided by section 59*  
(3) *[starting proceedings] or 81 (4) [decision on application for review].*

The Residential Tenancy Policy Guideline # 36 speaks to "Extending a Time Period" and provides in part: The word "exceptional" means that an ordinary reason for a party

not having complied with a particular time limit will not allow an Arbitrator to extend that time limit. The word “exceptional” implies that the reason for failing to do something at the time required is very strong and compelling. Furthermore, as one Court noted, a “reason” without any force of persuasion is merely an excuse. Thus, the party putting forward said “reason” must have some persuasive evidence to support the truthfulness of what is said.

Some examples of what might **not** be considered "exceptional" circumstances include:

- the party who applied late for arbitration was not feeling well
- the party did not know the applicable law or procedure
- the party was not paying attention to the correct procedure
- the party changed his or her mind about filing an application for arbitration
- the party relied on incorrect information from a friend or relative

Following is an example of what could be considered "exceptional" circumstances, depending on the facts presented at the hearing:

- The party was in the hospital at all material times.

Consequently, I find that the tenants reason that she had to have physiotherapy and was bedridden afterwards is insufficient reason to file her application late and does not meet the exceptional circumstances required by section 66(1) of the *Act* to extend a time limit. As the tenant has been unable to demonstrate any exceptional circumstances as to why their application was not filed within the allowable 10 days after receiving the Notice I must dismiss the tenant’s application to set aside the Notice.

Page two of the Notice also explains this to the tenant and states “If you do not file an application within 10 days, you are presumed to accept this Notice and must move out of the rental unit or vacate the site by the date set out on page one of the Notice If you do not move or vacate the landlord can apply for an Order of Possession that is enforceable through the Court”.



Section 55(1) of the *Act* states:

**55** (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the manufactured home site if*

*(a) the landlord's notice to end tenancy complies with section 45 [form and content of notice to end tenancy], and*

*(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.*

On the basis of this, as I have dismissed the tenant's application to cancel the One Month Notice to End Tenancy I am not required to consider the reasons given on the Notice and I grant the landlord an Order of Possession pursuant to s. 55 of the *Act*. As I have ordered the tenant to pay rent to the end of October I issue the Order of Possession effective on October 31, 2016.

As the landlords application to recover unpaid rent has some merit I order the landlord to retain the tenant's security and pet deposit of **\$1,400.00** in partial satisfaction of his monetary claim. This amount will be offset against the rent owed. A Monetary Order has been issued to the landlord pursuant to s. 67 of the *Act* for the following amount:

Rent due for August and September	\$2,281.20
Unpaid rent for October	\$1,440.60
Utilities due	\$32.35
Less security and pet deposit	(-\$1,400.00)
Total amount due to the landlord	\$2,354.15

As both parties claims have some merit I find both parties must bear the cost of their own filing fee.

### Conclusion

I HEREBY ISSUE an Order of Possession in favour of the landlord effective **October 31, 2016**. This Order must be served on the tenant. If the tenant fails to comply with the Order, the Order may be filed in the Supreme Court and enforced as an Order of that Court.

I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$2,354.15**. The Order must be served on the tenant. Should the tenant fail to comply with the Order, the Order may be enforced through the Provincial (Small Claims) Court of British Columbia as an Order of that Court.

The tenant's application to cancel the 10 Day Notice to End Tenancy is allowed.

The tenant's application for more time to file an application to dispute the One Month Notice to end Tenancy and to cancel the One Month Notice are dismissed without leave to reapply. The One Month Notice remains in force and effect.

As the tenancy will end the tenant's application to be permitted to change the locks of the rental unit is dismissed.

The tenant's application for a Monetary Order for money owed or compensation for damage or loss and for a rent reduction for repairs, services or facilities agreed upon but not provided are dismissed with leave to reapply.

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: October 03, 2016



