



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes MT, CNR, MNDC, OPR, MNR, MNSD, FF

### Introduction

This hearing was reconvened after the adjourned original hearing on November 3, 2016 in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the "Act").

The Tenant applied on September 13, 2016 for:

1. More time to make an application to cancel a notice to end tenancy - Section 66;
2. An Order cancelling a notice to end tenancy - Section 46; and
3. A Monetary Order for compensation or loss - Section 67.

The Landlord applied on September 28, 2016 for:

1. An Order of Possession - Section 55;
2. An Order for unpaid rent or utilities - Section 67;
3. An Order to retain the security deposit - Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions.

### Preliminary Matters

The Tenant states that she only heard about this hearing when she received the Interim Decision. The Tenant states that she cannot participate in the hearing and cannot be sworn in to provide evidence. The Tenant states that as far as she is concerned no hearing is taking place on this hearing date and that no hearing took place previously. The Tenant states that she wants to raise Charter of Rights issues. The Tenant was informed that there is no jurisdiction to hear such matters but that the Tenant is at liberty to raise such issues in a court of

competent jurisdiction. The Tenant states that she is still pursuing the cancellation of the notice to end tenancy and the claim for more time.

Rule 7.8 of the Residential Tenancy Branch Rules of Procedure (the "RTB Rules") provides that at any time after a dispute resolution hearing begins the arbitrator may determine whether the circumstances warrant an adjournment of the hearing. Although the Tenant did not specifically ask for an adjournment, given her oral submissions I still consider whether an adjournment is necessary to ensure fairness to the Tenant. Considering that the matter has been adjourned once, that the Tenant has appeared on the primary matter of unpaid rent and has her own claim in relation to this matter, and that the Tenant has not provided any evidence to support any other reason for further adjournment of the proceeding I find that the hearing may continue. The Tenant was again given the opportunity to participate if she chooses and the Tenant did continue to participate in the proceedings.

The Tenant's application contains a monetary claim for compensation and the Tenant confirms that this claim is made in relation to losses during the tenancy. RTB Rule 2.3 provides that claims made in an application must be related to each other. As the claim for compensation is not related to whether or not the tenancy continues, I dismiss this claim with leave to reapply.

#### Issue(s) to be Decided

Did the Tenant apply to dispute the notice to end tenancy within the time allowed under the Act?

Is the notice to end tenancy valid?

Is the Landlord entitled to an order of possession and a monetary order for unpaid rent?

Is the Landlord entitled to recovery of the filing fee?

#### Background and Evidence

The Tenant states that she has memory problems and cannot recall when she moved into the current unit. The Tenant states alternatively that she does have both short and long term memory ability.

The Landlord states that the tenancy originally started in unit 312 on July 1, 2015. The Landlord states that the Tenant paid a security deposit of \$375.00 and a pet deposit of \$375.00. The Landlord states that the pet deposit was returned when the Tenant moved into unit 12 on April

1, 2016 and that the security deposit was carried over to the current tenancy. The Parties agree that rent of \$1,025.00 is currently payable on the first day of each month.

The Landlord did not provide a copy of the notice to end tenancy. The Parties agree that the Tenant was served with both pages of a 10 day notice to end tenancy for unpaid rent (the "Notice"). The Parties agree that the Notice carried an effective date of September 21, 2016. The Parties agree that the amount of \$1,025.00 is indicated as being owed as of September 1, 2016. The Landlord states that the Notice was served to the Tenant on September 6, 2016 by posting the Notice on the door by Landlord CH and witnessed by Landlord TD. The Tenant states that she does not know when the Notice was given to her. It is noted that the Tenant indicated on her application that the Notice was received on September 9, 2016. The Parties agree that no rents have been paid since and including September 2016.

#### Analysis

Section 46 of the Act provides that upon receipt of a 10 notice to end tenancy for unpaid rent the tenant must, within five days, either pay the full amount of the arrears indicated on the notice or dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. Given the Landlord's supported evidence of service of the Notice and considering the Tenant's application details I find that the Notice was served on the Tenant by posting the Notice on the door on September 6, 2016. The Notice is therefore deemed to be received on September 9, 2016. Based on this evidence I find that the Tenant made her application within the time allowed and does not require additional time. I therefore dismiss the Tenant's claim for more time to make an application to dispute the Notice.

Section 26 of the Act provides that a tenant must pay the rent when and as provided under the tenancy agreement whether or not the landlord complies with this Act, the regulations or the tenancy agreement. Based on the undisputed evidence of unpaid rent for September 2016 I find that the Notice is valid and that the Tenant's claim to cancel the Notice is not supported by the evidence. As a result I dismiss the Tenant's claim to cancel the Notice and I find that the Landlord is entitled to an order of possession. Based on the undisputed evidence of the Parties I find that the Tenant failed to pay rent as required and that the Landlord is therefore entitled to unpaid rent for September, October and November 2016 in the amount of **\$3,075.00**.

As the Landlord's application has been successful I find that the Landlord is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$3,175.00**. Deducting the security deposit of **\$375.00** plus zero interest leaves **\$2,800.00** owed by the Tenant to the Landlord.

Conclusion

**I grant** an Order of Possession to the Landlord. The Tenant must be served with this **Order of Possession**. Should the Tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

**I order** that the Landlord retain the **deposit** and interest of \$375.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **\$2,800.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order 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: November 24, 2016

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Residential Tenancy Branch