



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      Landlord:    MND OPR FF  
                         Tenant:        CNC OLC

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “*Act*”).

The Landlords’ Application for Dispute Resolution was received at the Residential Tenancy Branch on October 3, 2016 (the “Landlords’ Application”). The Landlords applied for the following relief pursuant to the *Act*:

- an order of possession for unpaid rent or utilities;
- a monetary order for damage to the rental unit; and
- an order granting recovery of the filing fee.

The Tenant’s Application for Dispute Resolution was dated September 19, 2016, and was amended on September 21, 2016 (the “Tenant’s Application”). The Tenant applied for the following relief pursuant to the *Act*:

- an order cancelling a notice to end tenancy for cause;
- an order that the Landlord comply with the *Act*, Regulations or a tenancy agreement.

The Landlord R.A. attended the hearing on behalf of both Landlords, and was assisted by J.K., an advocate. The Tenant attended the hearing on his own behalf. All parties giving evidence provided a solemn affirmation.

The Landlord R.A. testified the Application Package, including the Notice of a Dispute Resolution Hearing and documentary evidence, was served on the Tenant on October 4, 2014. The Tenant acknowledged receipt. I find the Tenant was duly served with the Landlord’s Application package on October 4, 2016.

The Tenant testified he attempted to serve his Application package, including the Notice of a Dispute Resolution Hearing, documentary and digital evidence, on the Landlord in person on or about September 22, 2016. However, he stated the Landlords would not accept service of his documents. In reply, R.A. denied having received the Tenant's documentary evidence. Further, R.A. testified that she first became aware of the Tenant's Application when she attended the Residential Tenancy Branch to file the Landlords' Application. I am not satisfied the Tenant's Application package was served on the Landlords in accordance with the *Act*. Accordingly, the documentary and digital evidence submitted to the Residential Tenancy Branch by the Tenant has not been considered.

The parties were provided with the opportunity to present evidence orally and in written and documentary form, and to 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

The Landlords applied for a monetary order for damage to the rental unit. However, as of the date of this hearing, the Tenant continues to occupy the rental unit. I find that this aspect of the Landlord's claim is premature. Accordingly, I dismiss this aspect of the Landlords' claim with leave to reapply at a later date.

#### Issues to be Decided

1. Are the Landlords entitled to an order of possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated September 22, 2016 (the "10 Day Notice")?
2. Are the Landlords entitled to an order granting recovery of the filing fee?
3. Is the Tenant entitled to an order cancelling a 1 Month Notice to End Tenancy for Cause, dated June 26, 2016 (the "1 Month Notice")?
4. Is the Tenant entitled to an order that the Landlords comply with the *Act*, Regulations or a tenancy agreement?

### Background and Evidence

There is no written tenancy agreement between the parties. However, the parties agreed the tenancy began on or about September 29, 2014. Rent is currently \$750.00 per month. The Tenant paid a security deposit of \$375.00 at the beginning of the tenancy.

The Landlord R.A. provided oral testimony in support of the 10 Day Notice. She stated rent has not been paid for the months of August, September, October and November 2016. Accordingly, the Landlords served the 10 Day Notice on the Tenant in person on September 23, 2016. The Tenant acknowledged receipt of the 10 Day Notice on that date.

In reply, the Tenant acknowledged rent has not been paid as alleged by the Landlord R.S. However, he testified that he has tried to pay rent but that the Landlord has refused to open the door to him or accept it.

### Analysis

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find:

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent. When a tenant does not pay rent when due, section 46 of the *Act* permits a landlord to end the tenancy by issuing a notice to end tenancy. A tenant who receives a notice to end tenancy and wishes to dispute it has five days to either pay rent or file an application for dispute resolution. When a tenant does not pay rent or file an application for dispute resolution, the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice.

In this case, the Landlord R.A. testified that the Tenant has not paid rent for the months of August, September, October and November 2016, and that the Landlords served the Tenant with the 10 Day Notice in person on September 23, 2016. The Tenant acknowledged receipt of the 10 Day Notice on that date. I find that the 10 Day Notice was duly served on the Tenant on September 23, 2016.

As acknowledged by the Tenant, he did not pay rent or file an amendment to the Tenant's Application to dispute the 10 Day Notice within five days of receipt. Pursuant

to section 46 of the *Act*, I find the Tenant is conclusively presumed to have accepted the tenancy ended on the effective date of the 10 Day Notice. Accordingly, I find the Landlords are entitled to an order of possession, which will be effective two (2) days after service on the Tenant.

As the tenancy is ending based on the 10 Day Notice issued by the Landlords, it is not necessary for me to consider the Tenant's Application to cancel the 1 Month Notice, or for an order that the Landlords comply with the *Act*. The Tenant's Application is dismissed, without leave to reapply.

As the Landlords have been successful, I find they are entitled to recover the filing fee paid to make the Landlords' Application. I order that the Landlords may retain \$100.00 from the security deposit.

### Conclusion

The Landlords are granted 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.

The Tenant's Application is dismissed, without 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: November 15, 2016

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Residential Tenancy Branch