



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

For the tenant: CNR

For the landlord: FF MNDC MNR OPR

### **Introduction**

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlord requested:

- an Order of Possession for non-payment of rent pursuant to section 55;
- a monetary order for unpaid rent, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The tenant requested:

- cancellation of the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

Both parties confirmed receipt of each other’s applications for dispute resolution hearing package (“Applications”). In accordance with sections 89 and 90 of the *Act*, I find that both the landlord and tenant were duly served with the Applications.

### **Issue(s) to be Decided**

Is the landlord entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Is the landlord entitled to monetary compensation for unpaid rent and losses pursuant to section 67 of the *Act*?

Is the landlord entitled to recover the filing fee for this application from the tenant pursuant to section 72 of the *Act*?

Should the landlord's 10 Day Notice be cancelled pursuant to section 46 of the *Act*?

### **Background and Evidence**

It should be noted at the outset that the landlord applicant here "P.W." is a tenant of the owner of the rental unit. The owner of the rental unit "A.C." appeared as a witness on behalf of the tenant. P.W. has sublet a portion of the rental unit to the tenant. The landlord testified regarding the following facts. This tenancy began on September 01, 2013 as a one year fixed term tenancy. The landlord submitted a copy of this handwritten tenancy agreement signed only by the landlord on August 19, 2013. The tenant did not dispute this tenancy agreement, and both parties confirmed that the tenancy is now month-to-month. Monthly rent in the amount of \$1,700.00 plus 45% of utilities is payable on the first day of each month. A security deposit of \$1,000.00 was paid by the tenant, and the landlord continues to retain this deposit. The tenant continues to reside in the rental unit.

The landlord issued the 10 Day Notice on September 21, 2016, indicating an effective move-out date of October 01, 2016. The tenant does not dispute receiving this notice, which was posted on the door by the landlord on September 21, 2016. The notice states that the tenant failed to pay rent and utilities as follows: \$425 rent plus \$138.03 for utilities by July 01, 2016, \$1,700.00 by August 01, 2016, and \$1,700.00 by September 01, 2016. In his application the landlord was seeking a monetary order of \$3,825.00 plus additional compensation for damages for the above period as well as recovery of the \$100.00 filing fee. The landlord resubmitted his Application for Dispute Resolution on October 04, 2016 with a new monetary claim amount of \$5,950.00 plus compensation to reflect additional missed rent payments for May and June 2016. The landlord filed an Amendment to his Applications on November 07, 2016 with a revised monetary claim in the amount of \$7,073.00 to reflect additional missed payments of \$425.00 for the months of April and May 2016 plus 5% interest.

The tenant does not dispute that some rent payments have not been paid and does not possess any proof of such, or an order from an Arbitrator allowing them to withhold all or part of the rent, or that the tenant held back the rent, with prior notice to the landlord, for the cost of making emergency repairs. Of the \$1,700.00 rent payable to the landlord, \$425.00 was to be paid directly by the tenant to Canada Revenue Agency as a garnishee agreement between the landlord and Canada Revenue Agency. The tenant submitted that she was unaware of the missing payments to the CRA until October 2016.

The tenant entered into another Tenancy Agreement on August 01, 2016 with the owner of the home, A.C., in the amount of \$1,700.00 on a month-to-month basis beginning August 01, 2016, and payable on the first day of the month. She has been paying \$1,700.00 rent under this agreement to the owner of the home, A.C., since August 01, 2016 instead of paying the landlord under this Application. The owner, A.C. was called as the tenant's witness, who confirmed this was the agreement between the tenant and him.

During the hearing it came to my attention that there was another hearing on November 24, 2016 for an application by the landlord in this application, P.W., for cancellation of a one month notice for cause by the owner of the home, A.C., as well as a monetary order for compensation of money owed, plus the filing fee.

### **Analysis**

**Section 26** of the Act, in part, states as follows:

#### **Rules about payment and non-payment of rent**

**26** (1) 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.

Based on the testimony of the landlord and the tenant and their supporting documents respecting matters of rent, I find that the tenant was served with a notice to end tenancy for non-payment of rent and I find the notice to be valid.

The tenant has not paid the outstanding rent and despite having applied for dispute resolution to dispute the notice to end, the tenant has only confirmed that the rent has not been paid to the landlord and they do not have a right *under the Act* to deduct or withhold rent. Therefore the tenant's application to cancel the landlord's Notice to End for unpaid rent **is hereby dismissed** without leave to reapply. Effectively, as of October 1, 2016, the date indicated on the 10 day Notice, the tenancy has come to an end.

I find that the landlord is entitled to an **Order of Possession** for unpaid rent owing from July 01, 2016 to the effective date of October 01, 2016 indicated on the 10 day notice.

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 the landlord has applied for a monetary compensation to recover unpaid rent and utilities as well as additional compensation for losses. As these sections of the landlord's application may be impacted by the other hearing, and are unrelated to the main section which is to cancel the 10 day notice, I am

dismissing the landlord's application for recovery of the rent money and compensation, as well as the filing fee, with leave to reapply.

### **Conclusion**

The tenant's application to cancel a Notice to End tenancy for unpaid rent **is dismissed**.

The landlord's application, in part, is allowed. I find that the landlord's 10 day Notice is valid and effective as of October 01, 2016.

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant 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's application for monetary compensation for unpaid rent, and the filing fee, is **dismissed with the leave to reapply**.

**This Decision is final and binding on both parties.**

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*.

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Residential Tenancy Branch