



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

Tenant's Application made November 4, 2016: CNC; CNR; OPT; FF.

Landlord's Application made November 16, 2016: MNR; OPR; OPC; FF

### Introduction

This hearing was scheduled to consider cross-applications pursuant to the *Residential Tenancy Act* (the "Act").

The tenants are seeking to cancel the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") issued November 2, 2016; to cancel the landlord's One Month Notice To End Tenancy for Cause (the "One Month Notice"); an order of possession of the rental unit; and to recover the cost of the filing fee for his application from the landlord (collectively the "Tenants' Application").

The landlord is seeking an order of possession for unpaid rent; an order of possession for cause; a monetary award for unpaid rent; and to recover the cost of the filing fee for his application from the tenant (collectively the "Landlord's Application").

The landlord and the tenant appeared at the teleconference hearing. Both the landlord and the tenant gave affirmed testimony. During the hearing the landlord and tenant were given a full opportunity to be heard, to present sworn testimony and make submissions. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

### Preliminary and Procedural Matters

The landlord's agent L.H. testified that she sent a package of evidence consisting of 27 pages to the tenant by registered mail sometime around November 11<sup>th</sup> to 13<sup>th</sup>, 2016. The landlord testified that it was the same package of evidence that was submitted to the Residential Tenancy Branch. The tenant acknowledged receiving the registered

mail, however, he testified that he only received the landlord's Application and Notice of Hearing. The tenant objected to proceeding with the hearing without having an opportunity to review this evidence. Rather than granting an adjournment, the landlord agreed to give oral testimony about the evidence instead.

The landlord submitted late evidence to the Residential Tenancy Branch on December 1, 2016. The tenant testified that he received the late evidence on December 6, 2016 at 10:30 p.m. The tenant testified that he had an opportunity to review the evidence and that he did not object to the evidence being considered at the hearing.

The tenant requested to amend his Application to add the landlord named in the style of cause and to remove the name of the agent for the landlord. The landlord consented to the tenant's request for the amendment. Accordingly, I amend the tenant's Application as requested.

The landlord withdrew his application for a monetary order for unpaid rent as the landlord stated that the tenant paid the landlord the unpaid rent of \$14.66 at the end of November with his December rent.

#### Issue(s) to be Decided

- Should the landlord's 10 Day Notice be cancelled?
- Should the landlord's One Month Notice be cancelled?
- Is the landlord entitled to an order of possession for unpaid rent?
- Is the landlord entitled to an order of possession for cause?
- Is the landlord entitled to recover the cost of the filing fee for his application from the tenant?

#### Background and Evidence

The landlord and tenant agreed that the tenancy was month to month, however, there was no written tenancy agreement. The parties agreed that the tenancy started in March 2007 and that the rent is \$437.33 due on the first day of each month. No security deposit or pet damage deposit was paid by the tenant.

The landlord testified that the rent increased on September 1, 2016 from \$430.00 to \$437.33. The tenant agreed and did not raise any issues in regards to the rent increase. The landlord testified that the tenant did not pay the rent increase when he paid his rent for September and October 2016. The landlord testified that the tenant was short \$7.33

for those two months for a total of \$14.66. The tenant agreed with the landlord's testimony in this regard.

The landlord testified that the tenant was served with a 10 Day Notice in person on November 2, 2016. The 10 Day Notice was dated November 2, 2016 and showed an effective move out date of November 13, 2016. The tenant agreed with these particulars.

The tenant testified that he didn't realize that he had forgotten about the rent increase taking effect until he saw the 10 Day Notice. The tenant agreed that he paid the amount of \$14.66 at the end of November when he paid his rent for December 2016.

### Analysis

Based on the above, the testimony and documentary evidence, and on a balance of probabilities, I find as follows.

I find that the tenant was required to pay rent in the amount of \$437.33 for September and October and that the tenant was short \$7.33 for those two months for a total of \$14.66. As the tenant did not pay rent when it was due and did not pay the \$14.66 within five days of being served with the 10 Day Notice, the tenant is not entitled to cancellation of the 10 Day Notice. Accordingly, the landlord is entitled to an order of possession for unpaid rent.

As the tenancy is ending on the basis of the 10 Day Notice, I do not need to address the landlord's claims pertaining to the One Month Notice.

I find that the landlord is entitled to recovery of the \$100.00 filing fee as his application has been fully successful.

### Conclusion

I allow the landlord's application to end the tenancy due to the 10 Day Notice and I dismiss the landlord's application relating to the One Month Tenancy.

I dismiss the tenant's application in its entirety and uphold the 10 Day Notice.

Pursuant to section 55, I grant an Order of Possession to the landlord effective December 31, 2016 at 1:00 p.m., subject to the tenant being served with this Order.

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 is entitled to a monetary order in the amount of \$100.00 for recovery of the filing fee. The landlord is granted a monetary order in the amount of \$100.00 which must be served on the tenant as soon as possible. Should the tenant fail to comply with this monetary order, it may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: December 14, 2016

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Residential Tenancy Branch