



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** CNR

### **Introduction**

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the Act) for:

- 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. The landlord was represented by two agents, MD and JV.

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.

### **Preliminary Issue – Tenant's Late Evidence**

As part of this application, the tenant submitted 3 pages of evidence, which was received on November 14, 2016 by the Residential Tenancy Branch in Burnaby. The agents for the landlord did not consent to the admission of this evidence as it was late, and they did not have the opportunity to review it. The tenant submitted that he was unaware of the rules for submission of evidence as set out in the *Residential Tenancy Branch Rules of Procedure* (the Rules).

Rule 3.14 states that "*documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC office not less than 14 days before the hearing. In the event that a piece of evidence is not available when the applicant submits and serves their evidence, the arbitrator will apply Rule 3.17*".

The definition section of the Rules contains the following definition:

*“In the calculation of time expressed as clear days, weeks, months or years, or as “at least” or “not less than” a number of days weeks, months or years, the first and last days must be excluded.”*

In accordance with rule 3.14 and the definition of days, the last day for the landlord to file and serve evidence in reply to the tenant's application was November 13, 2016.

This evidence was not served within the timelines prescribed by rule 3.14 of the Rules. Where late evidence is submitted, I must apply Rule 3.17, which sets out that I may admit late evidence where it does not unreasonably prejudice one party. Further, a party to a dispute resolution hearing is entitled to know the case against him/her and must have a proper opportunity to respond to that case.

In this case, the agents for the landlord submitted that they did not have time to review the late evidence. On this basis I am excluding the late evidence as it would be prejudicial to the landlord.

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

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 this is the second application by the tenant for cancellation of the landlord's 10 Day Notice. This matter was previously before the RTB on August 30, 2016 for an application by the tenant to cancel a 10 day Notice for unpaid rent in the amount of \$500.00 for the month of July 2016. The arbitrator made a decision to cancel the 10 Day Notice with a requirement for the tenant to replace the July rent cheque by September 30, 2016. Failing that, the landlord may consider the July rent to be unpaid.

This tenancy began several years ago as a one year fixed term tenancy. There was no tenancy agreement submitted, and neither party could confirm when the tenancy began. Both parties confirmed that the tenancy is now month-to-month, with monthly rent in the amount of \$500.00 payable on the first day of each month. The tenant continues to reside in the rental unit.

The landlord issued a 10 Day Notice on October 3, 2016, indicating an effective move-out date of October 15, 2016. The tenant does not dispute receiving this notice, which was posted on the door by the landlord on October 3, 2016. The notice states that the tenant failed to pay rent for July 2016 in the amount of \$500.00.

In his application the tenant is seeking to have this 10 Day Notice cancelled as he was unable to reach the landlord. In his testimony the tenant submits that he made several attempts to drop off

a form required by the government Ministry for the issuance of a rent cheque, but was unable to contact the landlord. On October 13, 2016 he eventually dropped off the form in a drop box of the residential building where he resides, which was picked up by the landlord's agent, MD, at 7:14pm on October 20, 2016. He submits that at the time of the hearing this form has yet to be signed and returned to him, despite efforts since September 14, 2016. He eventually obtained an email contact for MD through the government ministry representative. In his testimony, the tenant did admit that he was not speaking to MD because of MD's "belligerence" towards him, and he did previously have the landlord's contact info, which he personally deleted.

The landlord's agent, JV, testified that the only correspondence he had received from the tenant was on October 17, 2016, which was an email for him to retrieve the form from the drop box. No cheque was given to the landlord as of September 30, 2016, and the landlord's agent JV testified that no other efforts were made by the tenant to reach him or the other agent MD.

The tenant does not dispute that the July rent payment has 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.

## **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 the supporting documents respecting the nonpayment 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 arbitrator at the last hearing had directed the tenant to have the July rent cheque replaced by September 30, 2016. The tenant has not paid the outstanding rent and despite having applied for dispute resolution to dispute the notice, 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 15, 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 July 2016 as indicated on the 10 day notice.

There was no dispute over the amount of unpaid rent for the month of July 2016 which was \$500.00. I find that the landlord is entitled to a Monetary Order in the amount of \$500.00.

### **Conclusion**

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

I find that the landlord's 10 day notice is valid and effective as of October 15, 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.

Pursuant to section 67 of the *Act*, I find that the landlord is entitled to a monetary Order in the amount of \$500.00 for rent owed as of November 2016 for the July 2016 rent. The landlord is provided with this Order in the above terms and the tenant(s) must be served with **this Order** as soon as possible. Should the tenant(s) fail to comply with this Order, this Order 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 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*.

Dated: December 1, 2016

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Residential Tenancy Branch