



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding VENTURA BUILDING SYSTEMS  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR, RP

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenant on December 16, 2016. The Tenant applied on that day requesting an order that the Landlord fix the mold problem in the rental unit. The Tenant amended her Application on December 19, 2016 to dispute a notice to end tenancy for unpaid rent.

The Tenant appeared for the hearing with a person who assisted the Tenant through the hearing process. The Landlord named on the Application, who was also acting as the agent for the company Landlord, appeared for the hearing with the resident manager. Only the Landlord and the Tenant provided affirmed testimony in this hearing.

The Landlord confirmed receipt of the Tenant’s Application by personal service and that they had not provided any evidence prior to this hearing. The Tenant confirmed that she had only provided a copy of the notice to end tenancy and a handwritten letter dated December 16, 2016 into evidence prior to this hearing.

The parties were informed of the instructions for the conduct of the proceedings and no questions were raised about the process. The parties were given an opportunity to present evidence and make submissions to me in relation to the evidence provided.

### Issue(s) to be Decided

- Is the Tenant entitled to cancel the notice to end tenancy?
- Is the Landlord entitled to an Order of Possession for unpaid rent?
- Is the Tenant entitled to an order for the Landlord to complete repairs to the rental unit?

### Background and Evidence

The parties agreed that this tenancy started on April 1, 2015 on a month to month basis. Rent under a signed tenancy agreement is payable in the amount of \$580.00 on the first day of each month. The Tenant paid the Landlord \$300.00 as a security deposit on March 12, 2015.

The Landlord testified that the Tenant failed to pay: \$220.00 for March 2016 rent; \$85.00 for June 2016 rent; \$20.00 for July 2016 rent; \$580.00 for September 2016 rent; and \$580.00 for December 2016 rent. The Landlord testified that as a result, the Tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") which was posted on the Tenant's door on December 2, 2016. The Landlord testified that the Tenant has also failed to pay rent for January 2017.

The Tenant disputed the March, June and July 2016 lack of rent payments testified to by the Landlord stating that she had made deductions from her rent because the Landlord had failed to deal with mold problems in the rental unit. The Tenant requested an adjournment of the proceedings to give her more time to gather evidence pertaining to this. The Tenant was asked how she had been disadvantaged in not being able to provide that documentary evidence prior to this hearing. The Tenant stated that she did not have sufficient funds to make photocopies of her evidence for this hearing and to serve on the Landlord.

The Tenant testified that she did not pay rent for September 2016 because the rent money she had to give to the Landlord was stolen. The Tenant stated that she had police evidence to show that the rent money had been stolen and that this matter was under investigation and this was the reason why she could not pay rent.

The Tenant testified that the Landlord visited her rental unit on December 3, 2016 and refused to take rent from her by cash she offered as this was the normal method of payment. The Tenant stated that the Landlord refused to accept it and instead posted the Notice to her rental unit door which she got on the same day, December 3, 2016. The Tenant stated that she made attempts to pay her rent for December 2016 in the amount of \$580.00 but the Landlord refused to accept it.

The Tenant confirmed she got both pages of the two page 10 Day Notice and did not dispute the 10 Day Notice within the five day time limit because she was sick and in hospital at the time. The Tenant did not make an Application for more time to cancel the 10 Day Notice and did not provide medical supporting evidence to support her claim. The Landlord stated that when they went to collect rent from the Tenant before and on December 1, 2016, the Tenant was not there. As a result, they prepared the 10 Day Notice and when they went to serve it to the Tenant on December 3, 2016, the Tenant

explained that she did have the rent of \$580.00 for December 2016 in the bank and she could go get them the cash for this amount.

The Landlord testified that she explained to the Tenant that they were happy to accept the rent of \$580.00 for December 2016 but that the Tenant was still in rental arrears for the previous months for which they were still seeking remedy through the 10 Day Notice. The Landlord testified that the Tenant then informed her that if they were still going to pursue the 10 Day Notice she was not going to pay any rent. At the end of the hearing, the Landlord stated that she was willing to accept an end of tenancy date of January 31, 2016 to which the Tenant agreed.

### Analysis

Section 26(1) of the *Residential Tenancy Act* (the "Act") requires a tenant to pay rent when it is due under a tenancy agreement whether or not the landlord complies with the Act, unless the tenant has authority to not pay it under the Act. In addition, Sections 46(4) and (5) of the Act states that within five days of a tenant receiving a 10 Day Notice, a tenant must pay the overdue rent or make an Application to dispute the Notice; if the tenant fails to do either, then they are conclusively presumed to have accepted the 10 Day Notice and they must vacate the rental unit on the vacancy date.

The Tenant requested an adjournment of the proceedings on the basis that she had evidence that the Landlord had failed to fix the alleged mold problems in the rental unit. I do not accept the Tenant's reason for the delay in submitting that evidence based on costs reasons alone. The Tenant disputed the 10 Day Notice and was obligated to find the monetary means to serve evidence as required by the parties. The Tenant testified on December 1, 2016 she attempted to pay rent to the Landlord but the Landlord refused this. Therefore, as this money did not exchange hands, I find the Tenant would have had the funds for photocopying evidence for this hearing. Therefore, I denied the Tenant's request for an adjournment as I found that this was an attempt by the Tenant to delay the proceedings.

Furthermore, I find the Tenant failed to provide any medical evidence to support her reasoning that her medical problems or her hospitalization preventing her from filing her Application to dispute the 10 Day Notice within the five day time limit provided by the Act.

In addition, I find the Tenant had no authority to not pay rent to the Landlord for September 2016. In this respect, the loss of the rent for this month through theft by an unknown third party would not have affected the Tenant's requirement under the

tenancy agreement and under the Act to pay rent. Therefore, I find that the Tenant was in rental arrears contrary to the Act by the time the 10 Day Notice was served to her.

Based on the foregoing, I dismiss the Tenant's request to cancel the 10 Day Notice. Section 55(1) of the Act states that if a tenant makes an Application to dispute a 10 Day Notice the Arbitrator **must** grant an Order of Possession if it complies with the Act and the tenant's Application is dismissed.

I have examined the 10 Day Notice, and I find the contents on the approved form comply with Section 52 of the Act. I also find the 10 Day Notice was served to the Tenant by posting to the Tenant's door pursuant to Section 88(g) of the Act. Therefore, as I have dismissed the Tenants' Application, I must grant the Landlord an Order of Possession to end the tenancy.

The Landlord was willing to have the tenancy end on January 31, 2017. Therefore, I issue the Landlord with an Order of Possession which is effective at 1:00 p.m. on January 31, 2017. This order must be served on the Tenant. If the Tenant fails to vacate the rental unit, the order may be enforced in the Supreme Court of British Columbia as an order of that court. Copies of the order are attached to the Landlord's copy of this Decision. As the tenancy is shortly to end, I dismiss the Tenant's Application requesting an order to do repairs to the rental unit as this request is now moot.

### Conclusion

The Tenant breached the Act by not paying rent. Therefore, the Tenant's Application is dismissed without leave to re-apply. The Landlord is granted an Order of Possession effective on January 31, 2017. This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: January 18, 2017