



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 2285 TRIUMPH STREET HOLDINGS LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MT, CNR

This hearing dealt with the tenant's application filed January 10, 2017 seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") and seeking more time to file the application. The tenant's application was brought under section 46(4) of the *Residential Tenancy Act* (the "Act").

The tenant and the property manager attended the hearing and gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions.

At the outset of the hearing the property manager advised that the landlord had brought an application for an order of possession and a monetary order, which is scheduled to be heard in February. The property manager understood that I could consider the landlord's application together with the tenant's. However, I decline to do so as the tenant had been given notice this matter was to be heard at a later date.

## **Issues**

Is the tenant entitled to an extension of time in which to file her application to dispute the 10 Day Notice?

If so, is the tenant entitled to an order cancelling the 10 Day Notice?

## **Background and Evidence**

The 10 Day Notice is dated January 3, 2017. The landlord testified that the 10 Day Notice was served on January 3, 2017 when it was posted to the tenant's door. The tenant testified that she received the 10 Day Notice on the same day when another tenant, who knows that the tenant is disabled and does not leave the rental unit often, slipped it under her door.

The tenant further testified that she filed her application to dispute the 10 Day Notice on January 10, 2017, but had first intended to file on January 5, 2017. She said that on January 5, 2017 she spoke with the Ministry of Human Resources and was told that the application to dispute the 10 Day Notice would go through the Ministry. On January 10, 2017 the tenant attended the Ministry's office to inquire into a payment from the Ministry that had been made on her behalf to the landlord, because she did not understand whether it was meant to cover a portion of the arrears. At that time she was told that the information she had received on January 5 was not correct, and that she should file an application to dispute the 10 Day Notice.

A copy of the tenancy agreement was submitted in evidence. It shows that the tenancy began on August 28, 2001, on a month to month basis and with a rent of \$500.00 due on the first of each month. A security deposit of \$275.00 was paid at the start of the tenancy.

The tenant testified that between 2004 and 2007 she was not receiving money from the Ministry of Human Resources and was unable to pay her rent. The landlord at that time did not insist that she do so. At one point she owed approximately \$18,000.00 in arrears. However, she managed to repay most of the arrears over time. In her application to dispute the 10 Day Notices she states: "\$4050 remains. The old landlord forgave the debt. The new landlord wants the money. I can not pay as she will not discuss acceptance of any continuance of payment unless a lump sum. I'm on PWD \$983.42 a month."

The property manager testified that a new owner took over the building and its management in mid-December, 2016. She testified that the new owner purchased the arrears owing. The closing documents from the purchase of the building and business were not in evidence.

The new owner wrote the tenant on December 19, 2016, demanding \$4,050.00 in arrears by January 1, 2017, and advising that "unpaid arrears could result in further legal action up to an including a Notice to Vacate, being served upon you. If the arrears are not cleared, an application could be made for possession of the property." A copy of this letter was in evidence.

The tenant wrote the new landlord on January 5, 2017. In the letter she described how she had paid a considerable amount of the arrears off over the years. She also described the difficulties she had encountered in doing so in light of her income. The letter closes with an acknowledgement that the arrears and the tenant's finances are her problem, and a statement that she had hoped to find another way to resolve the

problem until she was able to secure more affordable housing. A copy of this letter was in evidence.

The property manager testified that after receiving this letter she asked the old landlord if the tenant's debt had been forgiven. He answered that it had not, and wrote a letter dated January 11, 2017 to BC Housing saying the same. That letter states that the tenant was "in arrears in the amount of \$4400 approximately on December 14, 2016 . . . the amount of back rent \$4400 has not been forgiven." That letter was also in evidence, as was an August 2014 letter from the old landlord stating in part: "After April 2007 [the tenant] has endeavoured to pay off the accumulated deficit leaving a balance of \$4455.00 yet to be paid."

The tenant testified that after she received the December 19, 2016 letter from the new owner she attempted to contact the property manager but was advised that the manager was on holidays and would return January 3, 2017. The property manager stated that she was available until December 23, 2016. At some point the tenant made a proposal with respect to the arrears but the landlord was not receptive to it because the tenant also suggested she would be attempting to access low income housing and the proposed monthly payments meant that the arrears would not be paid off for years. The tenant says although she would like to access low income housing she has not been offered a spot.

As pointed out by the property manager, the tenant's application admits that \$4,050.00 is outstanding. At the hearing the tenant expressed some confusion as to whether there is now \$4,050.00 owing or whether the amount owing is \$600.00 less. There is a receipt in evidence dated January 6, recording payment by the tenant of \$550.00, with a \$25.00 late fee. It is not clear what the other \$25.00 is for, as the rent is \$500.00.

### Analysis

Section 46 of the Act provides that a landlord may end a tenancy if rent is unpaid on any day after it is due by giving notice to end the tenancy effective on a date no earlier than 10 days after the tenant receives the notice. Under subsection (4), the tenant has 5 days after receipt of the notice to pay the overdue rent or dispute the notice by making an application for dispute resolution, failing which the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice.

The 10 Day Notice was dated and served on January 3, 2017. The tenant applied on January 10, 2017 to dispute it, and is therefore outside of the five day timeline permitted by s. 46. Section 66 of the Act allows me to extend the time limit in exceptional

circumstance. I consider that the advice the tenant received from a representative at the Ministry, which the Ministry later corrected, is sufficiently out of the ordinary to allow me to extend the time limit, especially in light of the fact that the application was only two days late and is not past the effective date of the notice.

However, the tenant has admitted that she owes approximately \$4,000.00 in arrears. Rules about payment and non-payment of rent are defined in Part 2 of the Act. Section 26 of the Act states as follows:

**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.

The parties agree that there is a significant amount of rent outstanding. Based on the letters from the prior landlord in evidence, and the sworn testimony of the property manager, I accept that the prior landlord did not forgive the arrears. The tenant received notice that the new landlord would be insisting on its strict legal rights. The tenant has breached section 26 of the Act by failing to bring those arrears up to date.

Section 55 of the Act requires that I issue an order of possession when a tenant's application to dispute a notice to end tenancy has failed, provided the notice complies with the requirements of s. 52 of the Act. I am satisfied that the 10 Day Notice complies with s. 52 and I uphold it.

Accordingly, the tenancy ended on January 13, 2017, the effective date of the 10 Day Notice. The landlord has accepted payment for January for "use and occupancy only." I therefore find that the landlord is entitled to a two (2) day order of possession. If the landlord has accepted payment for February for use and occupancy only, or if the landlord wishes to do so, the order of possession may be served on the tenant in the last week of February.

#### Conclusion:

The tenant's application is dismissed.

The landlord is granted a two (2) day order of possession. Should the tenant or anyone on the premises fail to comply with this order, this order may be filed and enforced as an order of the Supreme Court of British Columbia.

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: February 3, 2017

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Residential Tenancy Branch