



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding ALLIED CONCEPTS CORP/WALKER  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes MT, CNR

### Introduction

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

- more time to make an application to cancel the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 66;
- cancellation of the landlord's 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, and to call witnesses.

As both parties were in attendance I confirmed that there were no issues with service of the landlord's 10 Day Notice, the tenant's application for dispute resolution or either party's evidentiary materials. The parties confirmed receipt of one another's materials. In accordance with sections 88 and 89 of the *Act*, I find that the parties were duly served with copies of the landlord's 10 Day Notice, the tenant's application and their respective evidence.

### Preliminary Issue – More time to make an application

The landlord testified that the 10 Day notice was served on the tenant on February 9, 2017 by posting on the rental unit door. The tenant testified that he received the landlord's 10 Day Notice on February 13, 2017. He filed his application for dispute resolution on February 15, 2017. Section 46(4) of the *Act* provides that a tenant must make an application for dispute resolution within 5 days after receiving the 10 Day Notice. I find that the tenant was within the time limits prescribed by the *Act* and there is no need for an order allowing more time to make an application.

### Issue(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

### Background and Evidence

The parties agreed on the following facts. This tenancy began on May 1, 2016. The monthly rent is \$1,100.00 payable on the first. A security deposit of \$550.00 was paid by the tenant at the start of the tenancy and is still held by the landlord.

The parties confirmed that the tenant failed to pay the full amount of rent for February, 2017 and there was an arrear of \$1,000.00 when the 10 Day Notice was issued. The parties agreed that the tenant failed to make any payment against the rental arrear within 5 days. The tenant testified that according to his calculations the rental arrear as of the date of the hearing, March 14, 2017 is \$1,950.00.

### Analysis

In accordance with subsection 46(4) of the *Act*, the tenant must either pay the overdue rent or file an application for dispute resolution within five days of receiving the 10 Day Notice. In this case, the tenant received the 10 Day Notice on February 13, 2017, and filed a notice of dispute application on February 15, 2017 to comply with the 5 day limit under the *Act*.

Where a tenant applies to dispute a 10 Day Notice, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the 10 Day Notice is based. The landlord stated that there was a rent arrear of \$1,000.00 when the 10 Day Notice was issued. The tenant confirmed that he has not paid the full amount of rent. While the tenant testified that he has encountered unforeseen hardships, I find that he was still obligated to pay the full amount of rent.

I accept the parties' evidence that the rental amount has not been paid in full and that the tenant failed to pay the full rent due within the 5 days of service of the 10 Day Notice. Accordingly, I dismiss the tenant's application and find that the tenancy ended on the corrected effective date of the 10 Day Notice, February 23, 2017.

Section 55(1) of the *Act* reads as follows:

**55** (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of*

*possession of the rental unit to the landlord if, at the time scheduled for the hearing,*

*(a) the landlord makes an oral request for an order of possession, and*

*(b) the director dismisses the tenant's application or upholds the landlord's notice.*

As I have dismissed the tenant's application to dispute the 10 Day Notice, I find that the landlord is entitled to an Order of Possession pursuant to section 55 of the *Act*. As the effective date of the 10 Day Notice has passed, I issue a 2 day Order of Possession.

#### Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. 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 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: March 14, 2017

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Residential Tenancy Branch