



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CAPREIT LIMITED PARTNERSHIP  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR

### Introduction

This hearing considered the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") seeking cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent dated March 2, 2017 (the "March 10 Day Notice") pursuant to section 46.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed 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 March 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 March 10 Day Notice, the tenant's application and their respective evidence.

### Chronology of Hearings

This tenancy is the subject of several separate hearings under the file numbers provided on the first page and the landlord has issued multiple 10 Day Notices to End Tenancy. This present hearing deals solely with the tenant's application to cancel the landlord's March 10 Day Notice. However, I am providing a chronology of the various hearings for context.

Cross applications from the landlord and tenant were heard at a hearing in December, 2016 where another arbitrator issued a monetary award to the landlord in the amount of \$3,881.25 against the tenant. The tenant's application for a monetary award was dismissed with leave to reapply.

At a hearing in February, 2017 where the tenant applied to cancel the landlord's 10 Day Notice dated January 16, 2017 the arbitrator for that hearing issued an Order of Possession to the landlord.

The tenant applied for review consideration of the February, 2017 decision. Review consideration was granted and both the decision and Order of Possession arising from the February, 2017 hearing was suspended pending the outcome of a new review hearing. A review hearing is scheduled in April, 2017 subsequent to this present hearing.

The landlord issued the March 10 Day Notice on March 2, 2017 which identifies the rent arrears as \$5,242.50. The tenant confirmed receipt of the March 10 Day Notice. The present hearing is for the tenant's application to cancel this March 10 Day Notice.

The landlord subsequently issued an amended 10 Day Notice on March 16, 2017 with a recalculated rent arrears. The tenant filed an application for dispute resolution in response to that subsequent 10 Day Notice and a hearing is scheduled for that matter in May, 2017.

At the conclusion of the hearing the tenant requested that I combine all of the various applications and have them be heard together. While I find that all the matters pertain to the same residential property and parties and seek similar relief, I find that it would be necessary to consider unique facts regarding each of the separate 10 Day Notices in resolving each application and it is not appropriate to combine the applications.

#### Issue(s) to be Decided

Should the landlord's March 10 Day Notice be cancelled? If not, is the landlord entitled to an order of possession for unpaid rent?

#### Background and Evidence

The parties agreed on the following facts. This tenancy began on December 1, 2015. The current monthly rent is \$1,286.25 payable on the first of each month. A security deposit of \$625.00 was paid by the tenant at the start of the tenancy and is still held by the landlord.

The March 10 Day Notice provides that the rental arrear is \$5,242.50. The tenant disagrees with the landlord's calculation of arrears. The tenant testified that she has not paid the March rent as she is awaiting the outcomes of the various Residential Tenancy

hearings. The tenant said that by her calculation the rent arrear as of the date of the March 10 Day Notice was \$5,167.50, which is the sum of the Monetary Award arising from the December, 2016 hearing and the unpaid rent of \$1,286.25 due on March 1, 2017. The tenant also testified that the arbitrator at the December, 2016 hearing gave her leave to reapply for her monetary claim and, while she has not been able to do so due to her health, she expects that she would succeed and the amount owing for the tenancy would be affected.

### 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. 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.

In the present case the parties agree that the tenant has failed to pay the March rent of \$1,286.25. The tenant testified that she did not pay the rent as she wished to await the outcome of the various Residential Tenancy hearings.

I find that the other hearings, review considerations, and applications did not suspend the tenant's obligation to pay the monthly rent in the amount of \$1,286.25 on the first of each month. I accept the evidence of the parties that the tenant has not paid any rent for March. Accordingly, I find that the tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the March 10 Day Notice, March 15, 2017. Therefore I dismiss the tenant's application to cancel the March 10 Day Notice.

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.*

I find that the landlord's March 10 Day Notice meets the form and content requirements of section 52 of the *Act* as it is in the approved form and clearly identifies the parties, the address of the rental unit and the effective date of the notice. While the landlord testified that there was a calculation error in the arrears amount listed on the notice, I find that the amount clearly included the March rent which the tenant acknowledged is unpaid. I find that the March 10 Day Notice sufficiently provided the grounds the landlord sought to end the tenancy.

As I have dismissed the tenant's application to dispute the March 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 March 10 Day Notice has passed, I issue a 2 day Order of Possession.

### Conclusion

I dismiss the tenant's application.

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenant or any occupant 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: April 10, 2017

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Residential Tenancy Branch