



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding VANCOUVER ISLAND MENTAL HEALTH SOCIETY  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes            CNR, O

### Introduction

On May 3, 2017, the Tenant made an Application for Dispute Resolution to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

The matter was set for a conference call hearing. The Tenant and Landlord attended the teleconference hearing.

At the start of the hearing I introduced myself and the participants. The hearing process was explained. The Landlord's evidence was reviewed and confirmed received by the Tenant. The Tenant did not submit any documentary evidence. The parties were provided with an opportunity to ask questions about the hearing process.

The parties were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

- Should the 10 Day Notice dated February 10, 2017, be cancelled?
- Is the Landlord entitled to an order of possession?

### Background and Evidence

The parties testified that the tenancy began on November 1, 2016, as a month to month tenancy. Rent in the amount of \$2,800.00 is to be paid by the first day of each month. The Tenant paid the Landlord a security deposit in the amount of \$1400.00. The Landlord provided a copy of the tenancy agreement.

The Landlord testified that the Tenant has not paid all the rent due under the tenancy agreement. The Landlord testified that he has only received \$14,000.00 of the \$19,600.00 of rent owing since the tenancy started.

The Landlord testified that he received the following rent payments:

November 2016	\$0.00
December 21, 2016	\$2800.00
January 23, 2017	\$1800.00 NSF
February 2, 2017	\$2800.00
March 3, 2017	\$2800.00
March 31, 2017	\$2800.00
May 3, 2017	\$2800.00
Total	\$14,000.00

The Landlord testified that the Tenant promised to make extra payments for the rent arrears but failed to do so. The Landlord provided copies of emails exchanged by the parties where the Tenant acknowledges he has not paid all the rent owing.

The Landlord testified that the Tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated May 1, 2017.

The Notice states that the Tenant has failed to pay rent in the amount of \$5,600.00 which was due on May 1, 2017. The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenant had five days to dispute the Notice.

The Landlord testified that the Tenant did not pay the rent arrears due under the tenancy agreement within 5 days of receiving the 10 Day Notice.

The Landlord seeks an order of possession.

The Tenant disputed the 10 Day Notice on May 3, 2017, within the required timeline.

In response, the Tenant testified that he acknowledges that he has not paid all the rent owing under the tenancy agreement. The Tenant testified that he paid the rent for May , 2017 two days after receiving the 10 Day Notice.

### Analysis

Section 26 of the Act states that a Tenant must pay the rent when it is due under the tenancy agreement, whether or not the Landlord complies with the 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 evidence before me, the testimony of the parties, and on a balance of probabilities, I find that the Tenant did not pay all the rent that is due under the tenancy agreement within 5 days of receiving the 10 Day Notice. The Tenant paid the rent for May 2017, but has not paid the rent for November 2016, or January 2017. The tenancy is ending.

I dismiss the Tenant's application to cancel the 10 Day Notice dated February 10, 2017.

Under section 55 of the Act, when a Tenants Application to cancel a Notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlord an order of possession.

I find that the 10 Day Notice complies with the requirements for form and content and I find that the Landlord is entitled to an order of possession effective 2 (two) days, after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

#### Conclusion

The Tenant failed to pay the rent due under the tenancy agreement within 5 days of receiving a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

The Landlord is granted an order of possession effective 2 days after service on the Tenant

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: June 07, 2017

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Residential Tenancy Branch