



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNR, CNC, OPR, OPC, MND, OPB, MNSD, O

### Introduction

This hearing was convened to deal with cross-applications under the *Residential Tenancy Act* (the “Act”). The landlord applied for an order of possession and a monetary order based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated May 3, 2017 (the “10 Day Notice”). The landlord also applied for an order of possession based on a 1 Month Notice to End Tenancy for Cause dated May 1, 2017 (the “1 Month Notice”).

At the outset of the hearing the landlord withdrew his application for a monetary order for unpaid rent as the outstanding rent claimed had been paid. He also withdrew his requests for a monetary order for damage to the unit and for authorization to retain the security deposit, as the rental unit was still occupied and those requests were therefore premature. The landlord also sought return of the application filing fee.

The tenant applied for orders cancelling both the 10 Day Notice and the 1 Month Notice.

Both the landlord and the tenant attended the hearing. The tenant had two witnesses available but their evidence was not required because I accepted the tenant’s evidence on his attempts to pay rent without further support. The hearing process was explained and the participants were asked at both the beginning and the end if they had any questions. The participants were given a full opportunity to be heard, to present their affirmed testimony and documentary evidence, to make submissions, and to respond to the submissions of the other party.

### Issues to be Decided

Is the tenant entitled to orders cancelling the 10 Day Notice and the 1 Month Notice?

If not, is the landlord entitled to an order of possession?

Is the landlord entitled to recover the application filing fee?

### Background and Evidence

A copy of the tenancy agreement was in evidence. It records a month to month tenancy starting in July of 2014. Monthly rent is currently \$570.35, due on the first of each month. A security deposit of \$275.00 was paid at the start of the tenancy and remains in the landlord's possession.

The landlord testified that the 10 Day Notice, which is dated May 3, 2017, was served on the tenant on May 3, 2017 when it was posted on his door. A Proof of Service document signed by a third party witness was in evidence in support of this date.

The landlord also testified that he served the tenant with the 1 Month Notice, which is dated May 1, 2017, on that same day but putting it through the tenant's mail slot. He also said that he affixed another copy of the 1 Month Notice to the tenant's door along with the 10 Day Notice on May 3, 2017.

The tenant stated that he received both notices on May 1, 2017 when he found them affixed to his door. The tenant filed his application to dispute both notices on May 8, 2017.

The tenant and the landlord agree that he tenant paid his May rent on May 19, 2017, when he submitted an "official cheque" from a credit union for the amount due. The landlord issued a receipt for "use and occupancy only" upon receiving this payment. The tenant has since made payment for June as well.

The tenant testified that he initially withheld his May rent because the landlord refused to provide a receipt. He submitted texts between himself and the landlord between May 1 and May 3 in which the tenant tells the landlord he has the rent but that he requires a receipt for it. There is also a text from the tenant to the landlord dated May 1 at 6:50 pm in which the tenant says: "If you expect me to leave then I respectfully ask for a proper end of tenancy agreement. I do not have that from you there for I have my rent for this month and request a receipt."

The tenant's documentary evidence also included a witness statement from a woman who wrote that she witnessed the tenant try to pay rent to the landlord three times before the tenant was served with the 10 Day Notice. That witness also stated that he landlord has been trying to evict the tenant by unofficial means.

The tenant also testified that at some point he went to the landlord's door to pay May's rent and he could tell the landlord was home but the landlord did not open the door to receive his rental payment.

The tenant further testified that the landlord sent someone to try to make him vacate by threatening him and that he is afraid and sleeps with a weapon by his bed.

The landlord in response acknowledged not answering the door on one occasion. He says that this was because he had been made uncomfortable by the response of the tenant and his friend on May 1, when he had attempted to collect rent from the tenant by attending at the tenant's unit. The landlord also stated that it is easy to tell when he is at home and that rent can be paid through the mail slot even when he is not present. The landlord included a note that he had written after attempting to collect rent from the tenant describing the May 1 encounter and also stating: "The rent is always received at the office . . ." The landlord also stated that the tenant paid rent the month before by depositing it in the mail slot.

The landlord's evidence also included a letter dated June 1, 2017 from another tenant and a letter dated May 17, 2017 from a witness, both describing concerns about noise levels for which they say the tenant before me is responsible. The landlord's evidence also included texts from the landlord to the tenant about noise, and texts from the tenant to the landlord in which the tenant swears at and threatens the landlord.

### Analysis

I find that the tenant was served with the 10 Day Notice when it was posted on his door on May 3, 2017. This is consistent with the landlord's evidence and with the third party witness statement on the Proof of Service document.

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.

Here, the tenant filed his application to dispute the 10 Day Notice within the applicable time limit. However, at the hearing, he acknowledged that he did not pay the amount outstanding as of May 1 until May 18. He said that he withheld his rent because the landlord would not issue a receipt, and because the landlord was deliberately avoiding

him. He did not explain why he did not pay directly to the office with a cashier's cheque or by another means (e.g. e-transfer, cash with a witness observing in lieu of a receipt, etc.) except to say that he does not have his own cheques and he was made aware of the option of paying with a cheque obtained through his credit union until later in the month.

Section 26 of the Act requires that rent be paid when it is due, subject to a very few exceptions, none of which apply here. The tenant has not sufficiently justified his failure to pay rent within five days of receiving the 10 Day Notice. Although the Act requires a landlord to provide a receipt for rent paid in cash, the landlord's purported failure to provide a receipt is not in and of itself a reason for not paying rent. In fact s. 26 of the Act specifically states that a tenant must pay rent when it is due, "whether or not the landlord complies with the Act." Accordingly, the tenant's application to cancel the 10 Day Notice is unsuccessful. The 10 Day Notice is upheld, and this tenancy ended on May 13, 2017, the effective date of the 10 Day Notice.

I find that the landlord's 10 Day Notice complies with section 52 of the Act. Therefore I also find that the landlord is entitled to an order of possession, pursuant to section 55 of the Act.

As the tenant has paid rent for June, I grant the order of possession effective at 1:00 pm on June 30, 2017.

This tenancy has ended pursuant to the 10 Day Notice. I therefore do not need to decide whether or not the 1 Month Notice to End Tenancy should be cancelled.

The landlord appears to have attempted to end this tenancy informally through oral notice. The landlord is reminded that a tenancy may only be ended in accordance with the Act. The landlord is also reminded that a receipt must be issued for cash payment.

### Conclusion

The tenant's application is refused. The 10 Day Notice is upheld.

The landlord is granted an order of possession effective at **1:00 pm on June 30, 2017**. This order must be served 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.

As the landlord was successful in his application, he is entitled to recover the application filing fee. I authorize the landlord to retain \$100.00 of the security deposit in full satisfaction of the filing fee.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the Act. Pursuant to s. 77 of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: June 19, 2017

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Residential Tenancy Branch