



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

Is the tenant entitled to an order cancelling the 10 Day Notice?

Are the landlords entitled to an order of possession?

## Background and Evidence

The 10 Day Notice, dated May 3, 2017, claims outstanding rent of \$4,400.00. It was agreed that the tenant was personally served with the 10 Day Notice on May 4, 2017. The tenant applied to dispute the 10 Day Notice on May 5, 2017.

A written tenancy agreement in the landlord's evidence reflects a month to month tenancy beginning on March 1, 2017, with a monthly rent of \$1,100.00 due on the first of the month. It indicates a security deposit owing but not paid at the time of signature. It was signed by both landlords on February 1, 2017 and by the tenant on February 8, 2017.

The tenant alleged that the tenancy agreement provided by the landlord was fraudulent and that he had not actually signed it. He further alleged that the landlord had failed to provide him with a copy of the tenancy agreement he did enter, which was in fact an agreement for a term of six months and for rental of the basement suite only, but still with a rent of \$1,100.00 monthly.

The tenant further testified that he and the landlord had discussed his taking over the upstairs suite.

The tenant and the landlord agreed that the tenant paid rent for March, 2017. A copy of a receipt for \$1,100.00 for March's rent was in evidence. It was also agreed that the tenant has not paid the \$1,100.00 owing for April, May, or June.

The tenant advised that he has not paid rent because the landlord failed to provide him with a copy of the tenancy agreement he signed, and that he was therefore not able to successfully apply for social assistance. In support of his submissions the tenant provided a "Service Request" printout from the internet, showing that he had applied for assistance March 17, 2017 but the application had been closed because documents

had not been submitted. That printout also showed that he had applied again on May 1, 2017, and that this second application was pending as more information was required.

The tenant said that he asked the landlord for a copy of the tenancy agreement when he signed it, and then again in March, and then again in April. He provided text correspondence between himself and the landlord and pointed to a text dated April 3, in which he advises he has been communicating with the bank about a loan and then says "I do need the rental documents so I can file for some benefits. Can I come and sign now." In response the landlord says: ". . . if u don't wana move upstairs & can't afford let me kno we hav someone else who is looking for it we will give u 1100 receipt for sure with no problem but I want paper sign & money at d same time I hope I will get my full money by tonight with no excuses thanku very much" (reproduced as written).

The tenant provided a copy of a shelter information form which the landlord signed on May 2. He said that this was the first documentation he had received from the landlord to assist with his assistance application. That form indicates monthly rent of \$2,200.00

The tenant also provided evidence of the theft of his wallet in late March, which he said contained \$1,100.00 for rent. Lastly, the tenant provided a copy of a cheque from his mother dated May 1, 2017 for \$1,000.00 made out to one of the landlords and marked "partial rent for May." The tenant said that the landlord refused to accept the cheque and that was because she insisted on cash.

The landlord's advocate stated in response that the agreement between the tenant and the landlord was as set out in the tenancy agreement in evidence. She pointed to the similarity of the tenant's signature on that agreement with his signature on another document. She also said that the landlord did provide the tenant with a copy of this agreement at the beginning of the tenancy. She also suggested that the landlord would have no motive for withholding the tenancy agreement because on the tenant's own argument providing it would facilitate the landlord's receipt of rent.

In written submissions the landlord denies ever refusing a cheque for May's rent. The landlord also says that the idea of the tenant's leasing of the whole home for April 1 was discussed, but a second tenancy agreement was never signed. The advocate stated that the text correspondence in evidence as described above was with respect to the possibility of the tenant and the landlords signing a new agreement for the rental of both the upstairs and the basement. She also said that the tenant moved his mother into the upstairs suite without permission, without signing any agreement, and without payment.

### 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.

Here, the tenant has applied to dispute the 10 Day Notice within the applicable timeline. However, he agrees that rent has not been paid for three months. It does not matter whether I accept the tenant's version of the agreement that was entered or the landlords' version, as the tenant acknowledges that rent is outstanding.

Section 26 of the Act requires that a tenant pay rent on the date that it is due. There are very limited circumstances under which a tenant may withhold rent, none of which are applicable here.

It is not clear that it would matter if I accepted the tenant's submission that the landlord obstructed him from successfully applying for social assistance or benefits by failing or refusing to provide him with a copy of the tenancy agreement. However, I do not accept the tenant's submissions on this in any event. As I read the text correspondence, the tenant's request for a copy of the agreement was a request for copy of the agreement to lease the whole house, which the landlord was not willing to enter into until the tenant paid rent outstanding for April for the basement suite. My conclusion is consistent with the shelter application signed by the landlord in early May, which shows a total rent of \$2,200.00, rather than \$1,100.00.

As the tenant has not paid rent, he is conclusively presumed under the Act to have accepted that the tenancy ended on May 14, 2017, the corrected effective date of the 10 Day Notice. On this basis I find that this tenancy ended on May 14, 2017, pursuant to 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 a two (2) day order of possession, pursuant to section 55 of the Act.

Conclusion

The tenants' application is dismissed, and the landlords are granted an order of possession **effective two (2) days from the date of service**. Should the tenants or anyone on the premises fail to comply with this order, it 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 s. 9.1(1) of the Act and is final and binding unless otherwise indicated in the Act.

Dated: June 15, 2017

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Residential Tenancy Branch