



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes CNR, OPR, MNR

### Introduction:

A hearing was convened under the *Residential Tenancy Act* (the “Act”) to deal with cross-applications based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated May 2, 2017 (the “10 Day Notice”). The landlords applied for an order of possession and a monetary order for unpaid rent and authorization to retain the tenant’s security deposit.

The tenant applied for an order cancelling the 10 Day Notice and for more time in which to do so. The tenant also applied for orders requiring the landlords to make repairs and comply with the Act, suspending or setting limits on the landlord’s right to enter the rental unit and reducing the rent.

Both of the named landlords attended the hearing with their property manager. An advocate or agent made submissions on their behalf. The tenant also attended. Both parties were given a full opportunity to be heard, to present documentary evidence and to make submissions.

The landlords acknowledged receipt of the tenant’s application. The landlords testified that the tenant had been served with their application, notice of hearing, and supporting evidence by registered mail. The landlords submitted a receipt for the registered mail and advised that the Canada Post tracking information showed that the mail had not been picked up and had recently returned to sender. The tenant stated that she had not received notice of registered mail for pick up. On balance I prefer the landlord’s evidence on this and therefore find that the tenant has been served with the landlord’s application and supporting materials. Refusal to accept registered mail is not a ground for review under the Act.

At the outset of the hearing I advised the parties that I would be severing the tenant’s application to cancel the 10 Day Notice from the tenant’s other applications. Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. Here, the tenant seeks several different orders, the most urgent of which is an order setting aside the 10 Day Notice. The other orders sought are not so related to the question

of whether or not the tenancy will continue to require determination during these proceedings. Accordingly, I dismiss the balance of the tenant's application, with leave to re-apply.

### Issues to be Decided

Is the tenant entitled to an extension of time to bring her application for an order cancelling the 10 Day Notice?

If so, is the tenant entitled to an order cancelling the 10 Day Notice?

If not, are the landlords entitled to an order of possession?

Are the landlords entitled to a monetary award for unpaid rent?

### Background and Evidence

The tenant testified that she was involved in a motor vehicle accident in early April, and that she has only become functional in the last two weeks. She could not go out and could not get through on the phone to a Residential Tenancy Branch information officer to find out how to apply to dispute the 10 Day Notice online. May 12 was the first day she was able to attend in person and apply. The tenant did not provide any documentary evidence of her injury. Nor did she provide any evidence in support of her application to cancel the 10 Day Notice.

According to the written tenancy agreement in evidence and the agreed upon facts, this tenancy began March 1, 2017. It is a month to month tenancy with rent of \$1,700.00 payable on the first day of each month. A security deposit of \$850.00 was paid at the beginning of the tenancy and remains with the landlord. The named tenant resides in the rental unit with another person, JS.

The landlord's agent testified that the tenants have not paid rent for April, May, or June, and that \$5,100.00 is currently outstanding. He also said that the tenants were supposed to have opened utilities accounts in their own name but delayed doing so and that the landlords have been paying utilities for the rental unit. The landlord's agent acknowledged that the evidence was incomplete and unclear with respect to how much the landlords have paid for utilities in the rental unit since this tenancy began.

The landlords served the named tenant with the 10 Day Notice on May 3, 2017. The tenant applied to dispute the notice on May 12, 2017.

The tenant testified that at the beginning of the tenancy JS gave the landlords a series of post-dated cheques for rent and the security deposit but that the landlords have not cashed them and

have asked that the rent be paid in cash instead. At another point the tenant said she was not sure if rent has been paid because she does not know whether the cheques have been cashed. The tenant further testified that she paid April's rent in cash but the landlords did not give her a receipt.

The landlord's agent in response said that the landlords have attempted to cash the cheques for April, May, and June, but none of them have been honored. He challenged the tenant's statement that she is unaware of whether the cheques have been cashed, and stated that the tenants have from the beginning of the tenancy asked for rent reductions in exchange for work.

The landlord's agent further said that he had a letter from the bank dated June 6, 2017 advising that the tenant's cheque for June was returned for insufficient funds, but had not submitted the letter in evidence because it had not been available when the application was first made. I asked the landlord's agent to send me a copy of the letter by fax by day's end, and he did so. I also ordered him to send a copy to the tenant. The tenant did not object to the admission of this evidence. I have since received a copy of the letter, which confirms that one of the landlords attended at the bank with a cheque payable to him from JS, but that the bank could not cash it due to insufficient funds in JS's account.

The tenant responded that this could not be true because that particular bank account has overdraft so the cheques would have gone through regardless of the amount of money in the account.

### Analysis

The tenant was served with the 10 Day Notice on May 3, 2017 but did not file an application to dispute the 10 Day Notice until May 12, 2017. Section 46(5) of the Act provides that if a tenant does not pay the amount outstanding or apply to dispute a 10 Day Notice within five days of receipt, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice, and must vacate the rental unit by that date.

Section 66 of the Act allows me to extend the time for filing the application. However, the tenant must demonstrate "exceptional circumstances" and the tenant here has not done so. There is no documentary evidence of her injury or incapacity, and, as a result of inconsistencies in her testimony, some of which are touched upon above, her testimony was not consistently believable. Additionally, she testified that her co-tenant, although he is not a signatory to the tenancy agreement, provided a series of post-dated cheques to the landlords and continues to reside in the rental unit with her. There was no explanation as to why he was not able to apply to dispute the 10 Day Notice on the named tenant's behalf within the five day time limit.

In accordance with section 46(5) of the Act, the failure of the tenant dispute the notice within five days led to the end of this tenancy on May 13, 2017, the effective date on the 10 Day Notice. The named tenant and anyone on the premises were required to vacate the premises by that date.

As this has not occurred, I find that the landlords are entitled to a two (2) day order of possession, pursuant to section 55 of the Act. I find that the landlord's 10 Day Notice complies with section 52 of the Act.

Sections 7 and 67 of the Act establish that a tenant who does not comply with the Act, Regulation or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

The landlord's agent testified that the tenant owes \$5,100.00 in unpaid rent and I award the landlords this amount. I find that rent is outstanding for April, May, and June and that the landlords were unable to cash the cheques provided by JS. I do not accept the tenant's suggestion that the landlords refused to cash the cheques because they preferred cash. The landlords are currently "out" a significant amount of money and surely they would have cashed the cheques to make up this amount if they could have. The letter from the bank of June 6, 2017 also contradicts the tenant's submission.

As the landlords were successful in this application, I find that they are also entitled to recover the \$100.00 filing fee.

The landlords continue to hold the tenant's security deposit of \$850.00. Over the period of this tenancy, no interest is payable on the deposit. In accordance with the offsetting provisions of section 72 of the Act, I authorize and order the landlords to retain the tenant's security deposit in partial satisfaction of the monetary claim.

### Conclusion

I grant an order of possession to the landlords effective **two (2) days after service on the tenant**. Should the tenant 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.

I issue a monetary order for the landlords in the following terms, which allows the landlords to obtain a monetary award for unpaid rent and the filing fee, and to retain the security deposit for this tenancy:

Item	Amount
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Unpaid rent	\$5,100.00
Filing fee	\$100.00
Less security deposit	-\$850.00
<b>Total Monetary Order</b>	<b>\$4,350.00</b>

I issue a monetary order in the landlords' favour in the amount of **\$4,350.00** against the tenant. The tenant must be served with this order as soon as possible. Should the tenant fail to comply with this order, it may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Dated: June 22, 2017

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Residential Tenancy Branch