



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

CNR, MT, SS

### **Introduction**

This hearing dealt with an application by the tenants under the *Residential Tenancy Act* (the “Act”) to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated May 2, 2017 (the “10 Day Notice”) and for more time in which to do so. The tenants also applied for an order allowing them to serve documents in a different way, but that request was withdrawn at the hearing as service was not at issue.

Both of the named tenants and the landlord attended the hearing. Both parties gave affirmed testimony and were provided the opportunity to present evidence orally and in written and documentary form and to make submissions.

Service of the tenants’ application and notice of hearing was not at issue. The landlord had filed responsive evidence and testified that she had left these materials at the tenants’ front door. The tenant speaking at the hearing said that she had not received the landlord’s evidence. The majority of the landlord’s evidence consisted of materials the tenant acknowledged and relied upon (including the tenancy agreement, the stay order, and Proof of Service forms). I have considered only that evidence.

### **Issues**

Are the tenants entitled to an extension of time for their application to dispute the 10 Day Notice?

If so, are the tenants entitled to an order cancelling the 10 Day Notice?

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

### **Background and Evidence**

The parties agreed that this tenancy began on April 1, 2017. A copy of the tenancy agreement was in evidence. It is the standard Residential Tenancy Branch (“RTB”) form agreement, and is

signed by one of the named tenants and the landlord. This tenancy is for a six month term, expiring September 30, 2017. Monthly rent is \$1,500.00, due on the first of each month. A security deposit of \$750.00 was paid at the beginning of the tenancy and remains in the landlord's possession. The tenant making submissions at the hearing acknowledged having signed the tenancy agreement.

That tenant testified that the tenancy came about after a housing support agency helped her find the rental unit, and that an outreach worker spoke with the landlord about her family's circumstances, which had resulted in an urgent need for housing. The tenants have children, including a sick child, and the rental unit is close to the hospital.

The landlord agreed to enter into the tenancy agreement, and the first month's rent and security deposit were paid by the housing agency. The tenant further testified that, outside of the written tenancy agreement, the landlord had agreed to accommodate the family's financial difficulties by accepting rent late at times at the beginning of the tenancy. The tenant repeated in her submissions that the landlord was aware of her family's circumstances. She also said that she had evidence of the landlord's agreement to be flexible around the timely payment of rent. That evidence was not before me, however. The tenant advised she had filed it in her application for review consideration of the May 12 RTB decision.

The tenant stated that the family was unable to pay May's rent, and, after attempting to arrange a personal loan that fell through, arranged a loan from the municipal rent bank. The loan application was completed on May 4, and after it was approved the rent bank made out a cheque directly to the landlord dated May 10, 2017. The tenant stated that she notified the landlord of this in late April, but the landlord refused to wait until May 10, 2017 to serve the 10 Day Notice.

The 10 Day Notice, dated May 2, 2017, was served on the one of the named tenants on the same date, at which point May rent was outstanding.

The tenant was served with notice of the landlord's application by direct request for an order of possession on May 9, 2017.

The tenant applied to dispute the 10 Day Notice. The tenant testified that she emailed the landlord on May 9 to advise her that she was disputing the 10 Day Notice. She filed a fee waiver application on May 10, 2017. It was approved on May 11, 2017.

The tenant further testified that the landlord obtained an order of possession by direct request on May 12, 2017, which the landlord served on her on May 18, 2017. The tenant then applied for a review of the decision granting the landlord the order of possession. That review was decided against the tenant on May 27, 2017. The landlord had a bailiff evict the tenant and her family on May 31, 2017.

On the same day the tenant obtained an order from the BC Supreme Court staying the May 12 and May 27 RTB decisions until the hearing and determination of this application by the RTB. A copy of that order was in the landlord's evidence.

The tenant advised that she has filed for judicial review of the May 12 and May 18 decisions. That application was not before me.

The landlord agreed that an outreach society had referred the tenant but did not agree that she had committed to relaxing the requirements around payment of rent. She said the outreach worker assured her these tenants would pay their rent on time.

The landlord also said that after the bailiff evicted the tenants on May 31, she changed the lock (at about 3:30 pm), after which time the tenants broke back in and are still residing there.

The landlord also said that the tenant has identified herself to the landlord as a lawyer and that her family is using a garage which they were not entitled to use under the terms of the tenancy agreement.

The tenant was upset during the hearing and I was required to ask her several times to moderate the speed and tone of her submissions.

## **Analysis**

### **Application for more time**

The tenant testified that she has applied to judicially review the May 12 and May 27 RTB decisions, which decided the landlord's application. Under most circumstances, that judicial review would be heard and, if the tenant were successful, the landlord's application by direct request for an order of possession would be referred back to the RTB for another hearing.

However, the court order staying the May 12 and May 27 RTB decisions pending the determination of the tenant's application today have effectively created an opportunity for the tenant by way of her own application to dispute the 10 Day Notice before the outcome of any judicial review of the RTB decisions on the landlord's application.

The tenant received the 10 Day Notice on May 2, 2017. She applied for a fee waiver on May 10, 2017, and her application was approved May 11, 2017. Her application to dispute is considered to have been made on May 10, 2017 as set out in Rule 2.6 of the Rules of Procedure. The application should have been made by May 8, 2017 in order to be within the five day time limit.

Here, I would allow the tenant more time to apply to cancel the 10 Day Notice. The tenant diligently pursued her application and also attempted to arrange a loan to pay May's rent. In the

circumstances these considerations are sufficiently extraordinary to allow the tenant a short extension of time under s. 66 of the Act. RTB Policy Guideline #36 sets out considerations relevant to whether an extension of time should be granted. Here, the following weigh in favour of an extension: the tenant did not willfully fail to comply with the time limit; the tenant had a bona fide intent to comply with the time limit; the tenant took reasonable and appropriate steps to comply; and, the tenant has brought an application as soon as practicable.

#### Application to cancel the 10 Day Notice

However, I cannot allow the tenant's application to cancel the 10 Day Notice itself. The tenant has not included any evidence in support of that application. The tenant appears to have assumed that I would have access to the materials related to the review consideration of the landlord's application. However, these are different applications, and I do not have that evidence before me.

The tenant testified that she was referred by an outreach organization, that the landlord was aware of her family's circumstances, and that the landlord had agreed to accommodate the late payment of rent.

The landlord was adamant that she did not agree to this. The landlord issued a 10 Day Notice the day after rent was due, which suggests that she did not agree to accommodate late rent. Additionally, s.5 of the Act states that landlords and tenants cannot contract out of the Act, and that any attempt to do so is void. Section 26 states that a tenant must pay rent when it is due under the tenancy agreement. Thus the Act does not necessarily even allow a landlord to contract to accept rent at a date other than the date it is due (although a landlord can clearly choose not to enforce her right to the timely payment of rent). The tenant was required to pay the rent owing on May 1, 2017.

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.

The tenant agreed that May rent was not available until May 10, 2017. The landlord testified, and I accept, that rent is also outstanding for June. Rules about payment and non-payment of rent are defined in Part 2 of the Act. Section 26(1) is as follows:

**26** (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this 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.

There is no space under the Act to cancel a notice to end tenancy based on financial hardship. These tenants are going through a difficult period. This is unfortunate. However, I have no choice but to dismiss the tenants' application and uphold 10 Day Notice. This tenancy ended on May 12, 2017, the corrected effective date of the 10 Day Notice.

Section 55 of the Act requires me to issue an order of possession in favour of the landlord where the tenant's application to dismiss a notice to end tenancy is dismissed and the landlord's notice complies with s. 52. As I find that the landlord's 10 Day Notice complies with section 52 of the Act and as the tenant has not paid May or June rent, I find that the landlord is entitled to a two (2) day order of possession.

### **Conclusion**

The tenants' application is dismissed. The 10 Day Notice is upheld.

I issue 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, this order may be filed and enforced as an order of the Supreme Court of British Columbia.

This decision is final and binding on the parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the Act.

Dated: June 22, 2017

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Residential Tenancy Branch