



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNR, FF

### Introduction

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order to cancel the 10 day Notice to End Tenancy dated June 5, 2017,
- b. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the 10 day Notice to End Tenancy was sufficiently served on the Tenant on June 5, 2017. Further I find that the Application for Dispute Resolution/Notice of Hearing was served on the landlord on June 7, 2017. With respect to each of the applicant's claims I find as follows:

### Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the 10 day Notice to End Tenancy dated June 5, 2017?
- b. Whether the tenant is entitled to recover the cost of the filing fee?
- c. Whether the tenant is entitled to recover the cost of the filing fee from a previous hearing?

### Background and Evidence

The tenancy began on December 1, 2014. The rent is \$700 per month payable in advance on the first day of each month. The tenant did not pay a security deposit. The tenancy agreement is oral.

The rental property is a basement suite. The agent for the tenants lives in the upstairs portion of the rental property. She and the landlord had a relationship in which they were living together. That relationship ended in March 2017 and the landlord vacated the property. There is a debate between the parties as to whether the relationship qualifies as a common law relationship. This matter is before the Supreme Court of British Columbia. The tenant is the son of the agent for the Tenant.

In April 2017 the landlord posted a 10 day Notice to End Tenancy. In a decision dated May 30, 2017 the arbitrator ordered that the 10 day Notice to End that was posted on April 13, 2017 be cancelled as the landlord failed to prove that he served a complete Notice to End Tenancy. The relevant portions of that decision provide as follows:

“Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*. In this case, the tenant’s agent testified that only 1 of 2 pages was served, and the landlord was not able to say whether or not both pages were served, and that the second page was just an instruction sheet and he didn’t think it was important. The *Act* requires both pages be served, and only page 1 of the 2-page form has been provided for this hearing. I can only deduct that page 1 alone was served, which is not sufficient service, and I therefore cancel the notice.

The parties agree that rent was originally \$700.00 per month. There is no written tenancy agreement, and the tenant’s agent testified that her son, who lives in the rental unit, has been paying the tenant’s agent every month and there are no rental arrears. There is no evidence before me of how much the tenant’s agent has been collecting from the tenant, however the tenant’s agent testified that she is a co-landlord, and if that is the case, the tenant’s agent has a conflict of interest. The tenant’s agent also enjoyed the rent money paid by the tenant. The tenant paid his mother an amount in excess of the rent originally agreed upon, but I am not satisfied that it was a rent increase but a contribution to his mother and her common-law spouse for food and alcohol.

In the circumstances, I find that rent is \$700.00 per month, food and alcohol not included.

Further, in the absence of any testimony or evidence of how much the tenant’s agent has been collecting from her son, I am not satisfied that the tenant has established the amount of rent that went to the landlord or to the tenant’s agent.

The tenant's agent testified that the rental income went into a joint account, which has been enjoyed by both parties. Therefore, I find that any money collected has been enjoyed by the landlord and the tenant's agent. I am not satisfied that the tenant has established any monetary claim."

The landlord testified as follows:

- He is the sole registered owner of the property. He produced a title search to prove this.
- He has not received any rent from the tenant for March, April, May, June, July and August 2017.
- He has not authorized the agent for the tenant to act on his behalf.

The agent for the tenant testified as follows:

- Her name was on the purchase papers when the property was originally purchased and as such she is a co owner of the property. She made significant financial contribution which allowed the landlord to purchase the property.
- She was in a common law relationship dating back to 2009.
- The tenant has paid her \$700 per month in rent for this period.
- Since the break up she has put the \$700 into her bank account and uses the money to pay household bills.
- She produced her bank statement which she says shows the deposit of the rental money.

#### Analysis:

The tenant did not attend the hearing. After carefully considering all of the evidence made the following determinations:

- I determined the agent for the tenant is not a co-owner of the rental property. She is not a registered owner of the property in the Land Title Office. The agent for the tenant failed to present sufficient evidence for me to determine that she has an ownership interest in the rental property.
- The respondent has not given the agent for tenant authority to act on his behalf.
- I determined the tenant has failed to pay the rent to the landlord. He may have paid money to his agent but this is not the same as paying it to the landlord. Further, it is unclear whether any money paid was rent or whether it was for living expenses such as food and alcohol.
- In the previous hearing the tenant testified the rent money was put into a joint account, which has been enjoyed by both parties. The evidence produced by the

agent for the tenant indicates that since March at least, money paid by the tenant was put into an account in her name only.

- The agent for the tenant alleged that she used the rent money to pay household expenses thus benefiting the landlord. However, she failed to provide an accounting of what household bills were paid with this money. The agent for the tenant failed to prove how much was to be allocated to rent and how much should be allocated to food and alcohol.
- I am satisfied based on the evidence presented that rent for June 2017 was not paid to the landlord or anyone authorized by the landlord to collect the rent on behalf of the landlord. It is not necessary for the purposes of this case for me to make a determination on whether the rent for March 2017 and April 2017.

#### Determination and Orders:

After carefully considering all of the evidence I determined that the landlord has established sufficient cause to end the tenancy. As a result I dismissed the tenant's application to cancel the Notice to End Tenancy. I order that the tenancy shall end on the date set out in the Notice. I dismissed the tenant's application to recover the cost of the filing fee. Further, I have not jurisdiction to award a filing fee from a previous and that claim is dismissed. I note however, that the arbitrator ordered that the tenant be permitted to reduce rent by that amount for a future month. .

#### Order for Possession:

The Residential Tenancy Act provides that where an arbitrator has dismissed a tenant's application to cancel a Notice to End Tenancy, the arbitrator must grant an Order for Possession. As a result I granted the landlord an Order for Possession on 2 days notice. .

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

#### **This decision is final and binding on the parties.**

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: August 04, 2017

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Residential Tenancy Branch