



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR

### Introduction

This hearing dealt with the landlord's application pursuant to section 55 of the *Residential Tenancy Act* (the *Act*) for an Order of Possession for unpaid rent.

The landlord, the landlord's agent, J.B., and the tenant attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The agent J.B. (the agent) stated that they would be the primary speaker.

The agent testified that the Landlord's Application for Dispute Resolution (the Application) and evidentiary package was sent to the tenant by way of registered mail on August 24, 2017. The agent provided the Canada Post Tracking Number to confirm this registered mailing. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenant was deemed served with the Application and evidentiary package on August 29, 2017, the fifth day after its registered mailing.

The tenant testified that she left her written evidence in the mail slot of the rental office at the building that she lives in. The landlord testified that they have not received the evidence. As the landlord does not have the evidence before him and the tenant is not able to prove service of her written evidence, I am unable to consider the tenant's written evidence.

The agent entered into evidence a signed and witnessed Proof of Service Document attesting to the fact that the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) was personally served to the tenant at 1:00 p.m. on July 04, 2017. The tenant disputed receiving the 10 Day Notice. In accordance with section 88 of the *Act* I find that the 10 Day Notice, dated July 04, 2017, was duly served to the tenant on July 04, 2017.

At the onset of the hearing the landlord testified that the tenant is still in the rental unit and that no payments have been made toward the tenancy since the 10 Day Notice was issued.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

Background and Evidence

While I have turned my mind to all the documentary evidence, including witness statements and the testimony of the parties, only the relevant portions of the respective submissions and/or arguments are reproduced here.

The landlord gave undisputed sworn testimony that they do not know when this tenancy began as they just recently acquired the building as of June 19, 2017, and the previous landlord did not provide any written tenancy agreements. The tenant testified that her tenancy began on April 01, 2017. The landlord testified that the monthly rent is \$375.00, due on the first day of each month. The tenant confirmed this to be true. The landlord testified that no security deposit was paid by the tenant. The tenant disputes this and states that she paid a security deposit to the previous landlord.

A copy of the signed 10 Day Notice, identifying \$375.00 in unpaid rent owing for this tenancy, dated July 04, 2017, with an effective date of July 14, 2017, was included in the landlord's evidence.

The tenant provided the Residential Tenancy Branch (RTB) with a copy of their Cheque History from the Ministry, dated August 31, 2017. The tenant has written a statement on the bottom half of the Cheque History indicating that they gave a cheque for the monthly rent, issued to the previous landlord, to the previous landlord's representative around July 20, 2017.

The landlord testified that, upon taking ownership of the building, the previous landlord, C.R., and the current landlord's building manager advised the tenants of the change in ownership and gave the tenants instructions as to who should be provided their monthly rent. The landlord testified that the building manager is on site regularly and is available to receive rent payments but that none have been made by the tenant.

The tenant testified that she did not dispute the 10 Day Notice because she never received the 10 Day Notice. The tenant testified that a cheque from the Ministry for the July 2017 rent was issued in the previous landlord's name and given to the previous landlord's representative D.I. who, the tenant states, gave the cheque directly to the current owner on July 21, 2017. The tenant testified that they have not paid the monthly rent for August 2017 and September 2017 as they were waiting to see what would

happen with this hearing. The tenant testified that another 10 Day Notice was issued by the building manager on site, which the tenant has disputed. The tenant testified that a hearing is scheduled for that matter to be heard in the future.

The landlord testified that they are not aware of a second 10 Day Notice being issued to the tenant as they were only required to give one 10 Day Notice to the tenant. The landlord testified that the previous landlord C.R. and the previous landlord's representative D.I. personally handed the 10 Day Notice of July 04, 2017, on behalf of the current landlord. The landlord testified that they have not seen any payment from the Ministry and that they had just talked to the previous landlord recently, who did not mention any payment being made.

The tenant testified that an "Intent to Rent" form was completed with the previous landlord C.R. The tenant testified that they were not informed about the new landlord until sometime in July of 2017 and that it was the previous landlord's name on the 10 Day Notice of July 04, 2017. I advised the tenant that the current landlord's name is actually on the 10 Day Notice and the tenant stated that they thought it was the previous landlord because it was the previous landlord's representative D.I. who handed the 10 Day Notice to her.

#### Analysis

I find that the second 10 Day Notice is not properly before me at this hearing and I cannot consider it.

Section 26 of the *Act* requires a tenant to pay rent to the landlord, regardless of whether the landlord complies with the *Act*, regulations or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the *Act*.

I find that the tenant initially disputed receiving the 10 Day Notice, dated July 04, 2017, which was the reason she gave for not disputing it. Later in the hearing, the tenant inadvertently admitted receiving the 10 Day Notice from the previous landlord's representative D.I. when advising me they thought the 10 Day Notice was signed by the previous landlord. I find that this inconsistency in the tenant's testimony impacts her credibility.

I find that, if the tenant did pay the monthly rent on July 21, 2017, as she stated at the hearing, this payment was late. The tenant had five days after receiving the 10 Day Notice on July 04, 2017, to pay the rent. The tenant's payment on July 21, 2017, was after July 09, 2017, the last day she could have paid the rent to avoid ending her tenancy. I further find that if the tenant did pay the monthly rent, they testified that they

paid the old landlord when they admitted that they had the 10 Day Notice with the new landlord's name on it.

I find that, based on the above and the balance of probabilities, I prefer the landlord's evidence and sworn testimony which I found consistent throughout the hearing and which aligned with the landlord's written evidence. I find that the tenant failed to pay any rent within five days of receiving the 10 Day Notice and did not make an application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the failure of the tenant to take either of these actions within five days led to the end of this tenancy on July 14, 2017, the effective date on the 10 Day Notice. In this case, the tenant and anyone on the premises were required to vacate the premises by July 14, 2017. As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession.

#### Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant or any occupant 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 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: September 22, 2017

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Residential Tenancy Branch