



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes            CNR, OPR, MNR, MDSD & FF

### Introduction

The Application for Dispute Resolution filed by the landlord makes the following claims:

- a. An Order for Possession for non-payment of rent
- b. A monetary order in the sum of \$1440 for unpaid rent for August and September.
- c. An order to recover the cost of the filing fee

The Application for Dispute Resolution filed by the Tenant makes the following claims:

- a. An order to cancel the 10 day Notice to End Tenancy dated August 3, 2017
- b. An order to cancel the 10 day Notice to End Tenancy dated September 15, 2017.

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. The parties acknowledged they had received the documents of the other party.

The tenant acknowledged receipt of the 10 day Notice to End Tenancy dated August 3, 2017. I find that the Notice to End Tenancy dated September 15, 2017 was served on the Tenant by posting on September 15, 2017. Further I find that the Application for Dispute Resolution/Notice of Hearing filed by each party was sufficiently served on the other.

Rule 4.2 of the Rules of Procedure provide as follows:

#### 4.2 Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

I ordered that the landlord's application be amended to a claim for "use and occupation rent" for the month of October in the sum of \$950.

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 August 3, 2017 and September 15, 2017?
- b. Whether the landlord is entitled to an Order for Possession?
- c. Whether the landlord is entitled to A Monetary Order and if so how much?
- d. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence:

The parties entered into a 3 month fixed term written tenancy agreement that provided that the tenancy would start on July 1, 2017, end on September 30, 2017 and the Tenant would have to vacate at that time. The rent was \$950 per month payable on the first day of each month. The tenant paid a security deposit of \$475 at the start of the tenancy.

The tenant(s) failed to pay the rent for the months of August (\$490 is owed), September (\$950 is owed) and October (\$950 is owed) and the sum of \$2390 remains owing. The tenant(s) continues to reside in the rental unit. .

Tenant's Application:

I dismissed the tenant's application to cancel the two 10 day notices. The landlord used the approved form. Rent is owed for August, September and October. There is no basis for cancelling the Notice.

Further, there is no basis for reinstating the tenancy as the tenancy agreement provided that the tenant would have to vacate on September 30, 2017 which is the end of the fixed term.

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 of Possession effective October 31, 2017 in accordance with the agreement of the parties.

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.

Landlord's Application - Order of Possession:

I determined the landlord is entitled to an Order of Possession for the reasons set out above.

Landlord's Application - Monetary Order and Cost of Filing fee:

I determined the tenant has failed to pay the rent for the month(s) of August (\$490 is owed), September (\$950 is owed) and October (\$950 is owed) and the sum of \$2390 remains owing. I granted the landlord a monetary order in the sum of \$2390 plus the sum of \$100 in respect of the filing fee for a total of \$2490.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

Conclusion:

I dismissed the Tenant's application to cancel the Notice to End Tenancy and I issued an Order of Possession effective October 31, 2017. I ordered the Tenant pay to the Landlord the sum of \$2490.

**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: October 24, 2017

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Residential Tenancy Branch