



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the Act") and made by Direct Request for: an Order of Possession for Unpaid Rent pursuant to section 55; and a monetary order for unpaid rent pursuant to section 67 of the Act. The tenant applied for: cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") pursuant to section 46 and authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. Both parties confirmed receipt of the other's evidentiary submissions for this hearing (1 Notice per application and 1 additional evidence package per application).

### Issue(s) to be Decided

Should the landlord's 10 Day Notice be cancelled or is the landlord entitled to an Order of Possession? Is the landlord entitled to an amount in unpaid rent from the tenant? Is the tenant entitled to recover her filing fee for this application?

### Background and Evidence

This tenancy began on August 22, 2017 as a fixed term tenancy. The scheduled expiry date for the tenancy was November 30, 2017. The rental amount of \$1500.00 was payable on the first of each month. The written residential tenancy agreement was submitted as evidence for this hearing. No security deposit was paid by the tenant.

The landlord testified that he purchased the rental unit from the tenant's son. The undisputed evidence at this hearing was that the tenant resided in the rental unit when her son owned the property and that she continued to reside in the rental unit after the sale of the property. The written residential tenancy agreement states that the tenant

will pay \$1500.00 on the first of each month. However, the tenant argues that she was not required to pay any rent.

The tenant testified that, as a part of her son's sale of the property, it was arranged that she would be able to remain on the property for a period of time after the sale. The tenant and her son both testified that the tenant was not to be required to pay rent. The landlord disputed the tenant's position that she was not required to pay rent. He relies on the tenancy agreement and other documentary evidence about the nature of the sale of property and this tenancy. With respect to the sale of the property, he submitted a copy of the addendum to the sale documents that indicate the sale amount was increased by approximately \$4000.00 prior to the closing of the sale of the property.

The landlord testified that the sale amount was increased so that the tenant would pay rent money directly to the landlord but the remaining period of the tenancy would be accommodate by the additional rental amount. The landlord submitted a copy of a Form K that was supplied to the strata corporation to advise them that he would be renting the property until November 30, 2017. He testified that the tenant has not paid any rent since he took possession of the property. He testified that he attempted to sort out any misunderstanding prior to issuing a Notice to End Tenancy. The correspondence between the parties submitted for this hearing support this testimony.

The tenant and her son (assistant/witness) did not submit any portion of the sale documents for this hearing. The landlord submitted documents including the final addendum to the sale agreement that the tenant's son acknowledged signing. The tenant testified that prior to the sale of the premises, she regularly paid the strata fee for the property but not any other rental amount was paid to her son.

The landlord applied for an Order of Possession for unpaid rent for the month of September 2017. The landlord testified that the tenant did not pay rent of \$1500.00 due on September 1, 2017. The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent on September 13, 2017 by posting it to the tenant's door. The landlord testified that the tenant did not pay the August portion of rent (\$375.00 from August 22, 2017 to August 31, 2017), or September 2017 rent after receiving the 10 Day Notice was served to her. The landlord testified that, as of the date of this hearing, the tenant had not paid rent for October 2017 – he provided undisputed testimony that the tenant continues to reside in the rental unit.

As well as an Order of Possession, the landlord applied for a monetary award of \$3,375.00 for the months of August 22 – August 31, 2017, September 2017 and October 2017 as well as the recovery of his \$100.00 filing fee.

### Analysis

When a tenant makes an application to cancel a notice to end tenancy, the burden falls to the landlord to justify the grounds to end the tenancy and the validity of the notice. On issuing a 10 Day Notice to End Tenancy on Unpaid Rent the landlord claimed that the tenant did not pay rent in accordance with the residential tenancy agreement and the Residential Tenancy Act.

Section 26(1) of the Act establishes that “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.” The landlord relied on the tenancy agreement to prove that the tenant was required to pay rent. The tenant did not dispute that she has not paid rent.

The tenant argued that she is not required to pay rent to the landlord and that the matter was settled within the negotiations for the sale of the property from her son to the landlord. Neither the tenant nor her son submitted documentary evidence to support their claim that the tenant is not required to pay rent for the time she intends to remain in the rental unit. To the contrary, the documentary evidence submitted by the landlord regarding the sale is silent on the issue of the tenant in the rental unit.

I accept the evidence of the landlord that the tenant is required to pay \$1500.00 rent per month in accordance with the residential tenancy agreement signed by both parties and scheduled to begin on August 22, 2017. Based on the undisputed testimony of the landlord, I find that the tenant did not pay rent after being served with the 10 Day Notice. I accept the testimony of the landlord, undisputed by the tenant that she did not pay rent for the portion of August 2017 that she resided in the unit (after the start of this tenancy) and that she did not pay rent in September 2017 or October 2017 in accordance with the agreement.

While the tenant filed an application to dispute the notice to end tenancy, I find that she cannot be successful in her application: the tenant did not provide sufficient evidence to support her version of events. As well, I accept the calm, candid and clear testimony of the landlord with respect to the payment of rent. Beyond his demeanor, the landlord had

documentary evidence to support his position including an addendum to the sale adjusting the sale amount by \$4000.00 and the residential tenancy agreement. When a clear written tenancy agreement is provided, the tenant must show that there is a reason why she is not required to pay rent. I find that the landlord has complied with the Act, the regulations and the tenancy agreement and that the tenant has not proven that she a right under this Act to deduct all of the rent.

As the tenant has failed to pay rent in accordance with the Act and has been unsuccessful in her application to cancel the landlord's 10 Day Notice to End Tenancy, the tenant is required to vacate the premises. I find that the landlord is entitled to a 2 day Order of Possession.

I accept the evidence offered by the landlord, both his testimony and his documentary evidence and find that the landlord is entitled to receive an order for unpaid rent (for August 22 – 31, 2017, September 2017 and October 2017). I find that the landlord is entitled to \$3375.00 in unpaid rent and I issue a monetary order to the landlord including this amount of unpaid rent.

As the parties agreed that the tenant did not pay a security deposit, I need not consider its return or its retention.

Both parties made applications to recover the filing fee for these applications. As the landlord was successful in his application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application. The tenant is not entitled to recover her filing fee.

### Conclusion

I grant the landlord an Order of Possession to be effective two days after notice is served to the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

I issue a monetary Order in favour of the landlord as follows:

Less Security Deposit	\$3375.00
Recovery of Filing Fee for this application	100.00
<b>Total Monetary Award to Landlord</b>	<b>\$3475.00</b>

The landlord is provided with this monetary Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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 19, 2017

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Residential Tenancy Branch