



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

For the landlord: OPR MNR FF  
For the tenant: MT CNR FF

### Introduction

This hearing was convened as a result of the cross-applications of the parties for dispute resolution (the “applications”) under the *Residential Tenancy Act* (the “Act”). The landlord applied for an order of possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, and to recover the cost of the filing fee. The tenant applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated July 13, 2017 (the “10 Day Notice”), for an extension of time to make an application to dispute a notice to end tenancy, and to recover the cost of the filing fee.

The landlord, an agent for the landlord (the “agent”) and tenant S.R. (the “tenant”) attended the teleconference hearing. The hearing process was explained to the parties, and the parties were given an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their relevant evidence orally and in documentary form prior to the hearing, and make submissions to me. I have reviewed all evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Although the tenant originally denied having received the Notice of Hearing, Application and documentary evidence, the tenant later confirmed that she did not pick up the registered mail package that was mailed to her. The agent testified that two packages were mailed by registered mail to both tenants and two registered mail tracking numbers were submitted in evidence, both of which have been included on the cover page of this decision for ease of reference. The agent testified that both packages were mailed to each tenant on August 9, 2017. Documents mailed by registered mail are

deemed served five days after they are mailed pursuant to section 90 of the *Act*. As a result, I find the tenants were deemed served as of August 14, 2017.

### Issues to be Decided

- Should the 10 Day Notice be cancelled or upheld?
- Is the landlord entitled to an order of possession under the *Act*?
- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- Is either party entitled to the recovery of the cost of the filing fee under the *Act*?

### Background and Evidence

A copy of the tenancy agreement was submitted in evidence. The parties agreed that a fixed-term tenancy began on January 22, 2016 and reverted to a month to month tenancy after December 31, 2016. Monthly rent of \$1,350.00 is due on the first day of each month. The tenant paid a security deposit of \$675.00 which has accrued no interest and which the landlord continues to hold.

Regarding the 10 Day Notice, the tenant confirmed being served with the 10 Day Notice on July 13, 2017 and didn't dispute the 10 Day Notice until August 9, 2017. The effective vacancy date listed on the 10 Day Notice is July 23, 2017. The tenant continues to occupy the rental unit.

The tenant testified that the reason she could not dispute the 10 Day Notice on time was due to her not understanding that she had to dispute the 10 Day Notice and that she suffers from fibromyalgia. The tenant confirmed that she received both pages of the 10 Day Notice.

Regarding the amount of unpaid rent, the tenant testified that felt that as of the date of the hearing that she was fully paid up on rent arrears. The landlord and agent completely disagreed and testified that the total amount owing was \$12,100.00 in rent arrears comprised as follows:

Amount of Rent Due	Date Rent Due	Amount Paid by Tenant	Date Paid by Tenant
October 1, 2016	\$1,350.00	0	None
November 1, 2016	\$1,350.00	0	None
December 1, 2016	\$1,350.00	0	None

January 1, 2017	\$1,350.00	\$400.00	January 15, 2017
February 1, 2017	\$1,350.00	0	None
March 1, 2017	\$1,350.00	\$400.00	March 8, 2017
April 1, 2017	\$1,350.00	0	None
May 1, 2017	\$1,350.00	\$600.00	May 15, 2017
June 1, 2017	\$1,350.00	0	None
July 1, 2017	\$1,350.00	0	None
August 1, 2017	\$1,350.00	\$200.00	August 15, 2017
September 1, 2017	\$1,350.00	\$2,500.00	September 14, 2017
October 1, 2017	\$1,350.00	1. \$500.00 2. \$850.00	1. October 13, 2017 2. October 25, 2017
<b>TOTAL AMOUNT OWED IN RENT</b>	<b>\$17,550.00</b>	<b>TOTAL AMOUNT PAID IN RENT</b>	<b>\$5,450.00</b>
<b>TOTAL RENT OWING BY TENANT</b>			<b>\$17,550.00</b> <b><u>-\$5,450.00</u></b> <b>\$12,100.00</b>

The tenant failed to submit any evidence such as e-transfer or bank documents to support that she made any additional payments other than what is described in the table above. The landlord and agent testified that the tenant continues to owe \$12,100.00 in rent arrears as of the date of the hearing. The landlord is also seeking the recovery of the cost of the filing fee.

During the hearing, the tenant stated that she did not submit any document to support she paid rent such as e-transfer receipts as she claims she did not know how. The tenant was referred to the Notice of Hearing documents which explain under #1 that evidence to support your position is important and must be given to the other party and the Residential Tenancy Branch before the hearing. When the tenant confirmed that she paid \$400.00 on January 15, 2017 by e-transfer, the tenant was asked why she didn't pay all rent arrears by e-transfer as of January 15, 2017. The tenant stated that she could not answer that.

### Analysis

Based on the testimony of the parties and the documentary evidence before me, and on the balance of probabilities, I find the following.

**10 Day Notice** – Firstly, I have considered the tenant's testimony and find that neither reason described above supports exceptional circumstances that would support an extension of time to make an application to dispute a notice to end tenancy. Furthermore, section 66(3) of the *Act* prohibits me from extending the time limit to make an application beyond the effective date of the notice which in the matter before me was July 23, 2017 and the tenant did not dispute the 10 Day Notice until August 9, 2017. As a result, I dismiss the tenant's request for an extension of time to make an application to dispute a notice to end tenancy due to insufficient evidence and that I am barred at law to extend the time limit to August 9, 2017.

Therefore, I dismiss the tenant's application to cancel the 10 Day Notice **without leave to reapply** due to insufficient evidence. Section 55 of the *Act* applies and states:

#### **Order of possession for the landlord**

**55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, **the director must grant to the landlord an order of possession of the rental unit if**

- (a) **the landlord's notice to end tenancy complies with section 52 *[form and content of notice to end tenancy]*, and**
- (b) **the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.**

[My emphasis added]

As a result and taking into account that I find the 10 Day Notice complies with section 52 of the *Act*, I grant the landlord an order of possession effective **two (2) days** after service on the tenant as the tenant continues to occupy the rental unit . I find the tenancy ended on July 23, 2017 which was the effective vacancy date listed on the 10 Day Notice.

**Rent arrears** – Although the tenant denied owing any amount of rent as of the date of the hearing, I find the tenant's testimony to be vague and inconsistent and that as a

result, I prefer the testimony of the landlord and agent which was supported by their testimony. In other words, I find the tenant is not credible. In reaching this finding I have considered the tenant stated under oath that she could not say why she could not pay the landlord once she had testified that she had paid \$400.00 to the landlord on January 15, 2017 by e-transfer. I find the tenant has breached section 26 of the *Act* which states:

**Rules about payment and non-payment of rent**

**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.

[My emphasis added]

The tenants continues to occupy the rental unit. The landlord will not regain possession of the unit until after service of the order of possession. I find the landlord has met the burden of proof and I find the landlord has established a monetary claim of **\$12,100.00** for rent arrears and loss of rent as claimed.

As the landlord has succeeded with their application, I grant the landlord the recovery of the cost of the **\$100.00** filing fee pursuant to section 72 of the *Act*.

**Monetary Order** – I find the landlord has established a total monetary claim of **\$12,200.00** comprised of \$12,100.00 in rent arrears and loss of rent plus the recovery of the cost of the \$100.00 filing fee. During the hearing, the landlord and agent request to retain the tenants' security deposit. Pursuant to section 72 of the *Act*, I authorize the landlord to retain the tenants' full security deposit of \$675.00 which includes no interest in partial satisfaction of the landlord's monetary claim. I grant the landlord a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenants to the landlord in the amount of **\$11,525.00**.

**Conclusion**

The tenant's application to cancel the 10 Day Notice and to recover the cost of the filing fee is dismissed, without leave to reapply, due to insufficient and inconsistent evidence. The landlord's application is successful. The tenancy ended on July 23, 2017. The landlord has been granted an order of possession effective two (2) days after service on the tenants. The tenants must be served with the order of possession and the order of

possession may be filed in the Supreme Court of British Columbia to be enforced as an order of that court.

The landlord has established a total monetary claim of \$12,200.00 as described above. The landlord has been authorized to retain the tenants' full security deposit of \$675.00 which has accrued no interest in partial satisfaction of the landlord's monetary claim. The landlord has been granted a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenants to the landlord in the amount of \$11,525.00. This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: October 25, 2017

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Residential Tenancy Branch