



# Dispute Resolution Services

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## Residential Tenancy Branch Office of Housing and Construction Standards

A matter regarding Park Royal Ventures  
and [tenant name suppressed to protect privacy]

### **DECISION**

Dispute Codes Landlord: OPR MNR FF  
Tenant: CNR

#### Introduction

This hearing, held by teleconference on December 8, 2017, dealt with cross Applications for Dispute Resolution filed by the parties.

The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- An order of possession for unpaid rent or utilities;
- A monetary order for unpaid rent or utilities; and,
- to recover the filing fee from the tenant for the cost of this application.

The tenant seeks an order to:

- Cancel the Notice to End Tenancy for Unpaid rent or utilities.

The Landlord and the Tenant both attended the hearing and provided affirmed testimony. Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

Both parties submitted late evidence in support of their application. As stated in the hearing, and in accordance with the Residential Tenancy Branch Rule of Procedure 3.14, evidence to be relied upon at a hearing must be received by the Residential Tenancy Branch and the respondent not less than 14 days before the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure, and evidence that is relevant to the issues and findings in this matter are described in this Decision.

During the hearing, the Landlord stated that she no longer wants to pursue a monetary order for unpaid rent, and she is only looking for an order of possession for the rental unit. As such, I amend the Landlord's application accordingly.

#### Issue(s) to be Decided

- Is the tenant entitled to have the landlord's 10 Day Notices to End Tenancy cancelled?

- If not, is the landlord entitled to an Order of Possession?

### Background and Evidence

As discussed by both parties during the hearing, rent in the amount of \$2,483.00, is due on the first day of each month. The Landlord holds a security deposit in the amount of \$1,197.50.

Both parties agree on the following:

- the Tenant had a positive rent balance of \$174.41 leading into September of 2017.
- the Tenant paid \$1,000.00 on September 5, 2017.
- no rent was paid after September 5, 2017, until the Tenant paid \$9,000.00 on December 6, 2017.
- The most recent payment on December 6, 2017, paid the balance in full, up until the end of December 2017.

The Landlord testified that she put the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) in the Tenant's mailbox on September 20, 2017. The amount owing at that time was \$1,378.59. The Tenant acknowledged receipt of this document by the next day.

### Analysis

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent. When a tenant does not pay rent when due, section 46(1) of the *Act* permits a landlord to end the tenancy by issuing a notice to end tenancy. A tenant who receives a notice to end tenancy under this section has five days, under section 46(4) of the *Act*, after receipt to either pay rent in full or dispute the notice by filing an application for dispute resolution. When a tenant does not pay rent in full or dispute the notice, the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice, as per section 46(5) of the *Act*.

With respect to the 10 Day Notice, I am satisfied the Tenant had a balance of rent owing at the time it was issued, on September 20, 2017. The Tenant acknowledged receiving this document within a day of it being delivered to his door, which the Landlord says was on September 20, 2017. I find the Tenant received the 10 day Notice on September 21, 2017.

The Tenant had 5 days to pay rent in full or file an application for dispute resolution. Although the Tenant paid his balance of rent in December of 2017, the evidence before me indicates that at the end of the 5 day period, on September 26, 2017, the Tenant had not paid rent **in full**. Further, he has not presented any evidence at this hearing to show that he had a right under the *Act* to withhold rent. As such, I find the Tenant is conclusively presumed to have accepted the end of the tenancy.

Given that the Tenant has paid until the end of December, I find the Landlord is entitled to an order of possession, which will be effective December 31, 2017, at 1 pm, after it is served on the Tenant.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Landlord was substantially successful in this hearing, I order the Tenant to repay the \$100. Pursuant to sections 72 of the *Act*, I authorize the Landlord to retain \$100.00 from the security deposit in order to compensate her for the cost of filing this application.

Conclusion

The Tenant's application for dispute resolution is dismissed without leave to reapply.

The landlord is granted an order of possession effective **December 31, 2017, at 1 pm**, after service on the tenant. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be 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: December 08, 2017

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Residential Tenancy Branch