



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding VANCOUVER EVICTION SERVICES  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR, OPR, MNR, MNDC, MNSD, FF

### Introduction

This hearing dealt with cross applications, via teleconference call. The tenant filed to dispute a 10 Day Notice to End Tenancy for Unpaid Rent. The landlord applied for an Order of Possession for unpaid rent and a Monetary Order for unpaid and/or loss of rent; and, authorization to retain the tenant's security deposit.

The hearing commenced at 11:00 a.m. and for the first 10 minutes of the hearing, only the landlord and the landlord's agent were present. The landlord acknowledged receipt of the tenant's Application for Dispute Resolution. The landlord testified that the landlord's hearing documents and evidence was sent to the tenant at the rental unit address via registered mail on October 27, 2017 and successfully delivered on October 31, 2017. The landlord provided a registered mail tracking number as proof of service. I was satisfied the landlord had duly served the tenant with the landlord's hearing documents and I continued to hear from the landlord.

The tenant joined the conference call at approximately 11:11 a.m. When the tenant appeared I summarized the facts and evidence I had heard from the landlord thus far and permitted the tenant the opportunity to respond to those submissions as well as provide me with her version of events. The tenant's telephone connection was intermittent and the tenant's telephone disconnected a few times. The teleconference call was left open so that the tenant may re-connect, which she did. The teleconference call ended at 11:39 a.m. and by that time I had heard from both parties and I had provided my findings and reasons to the parties orally. The tenant indicated she disagreed with my decision. I strongly encouraged the tenant to contact an Information Officer with the Residential Tenancy Branch quickly to determine the remedies available to her if she disagrees with the decision.

This decision is being sent to each party, by email, at the request of the parties.

Issue(s) to be Decided

1. Should the 10 day Notice to End Tenancy for Unpaid Rent be upheld or cancelled?
2. Is the landlord entitled to an Order of Possession?
3. Is the landlord entitled to a Monetary Order for unpaid and/or loss of rent?
4. Is the landlord authorized to retain the tenant's security deposit?

Background and Evidence

The tenancy commenced on November 15, 2016 and the tenant paid a security deposit of \$925.00. The tenant was required to pay rent of \$1,850.00 on the 15<sup>th</sup> day of every month.

On September 28, 2017 the landlord's agent posted a *10 Day Notice to End Tenancy for Unpaid Rent* ("10 Day Notice") on the door of the rental unit. The 10 Day Notice indicates rent of \$5,550.00 was outstanding as of September 15, 2017 and an effective date of October 7, 2017. The tenant filed to dispute the 10 Day Notice within the time limit for doing so. In filing the tenant's application, the tenant submitted the reason for disputing the Notice is as follows: "I am willing to pay the rent I am just waiting for a wire to come from overseas."

During the hearing, the tenant testified that she and/or a person named "Mike" paid the landlord approximately \$7,000.00 via e-transfer shortly after receiving the 10 Day Notice although the tenant could not recall the exact date. The tenant acknowledged that she has not paid any amount after allegedly paying approximately \$7,000.00 and that she still owes the landlord some rent.

The landlord denied receiving any money from the tenant or anybody else on the tenant's behalf after the 10 Day Notice was served. The landlord submitted that the tenant continues to occupy the rental unit and has not paid any rent for the month of July 2017 onwards.

The tenant stated she had "proof" she paid the \$7,000.00 although she acknowledged that she did not submit it as evidence for this proceeding and she did not have a copy of the evidence in front of her at the time of the hearing.

The landlord requested an Order of Possession effective as soon as possible considering the length of time the landlord has gone without payment and concerns over the condition of the rental unit. The tenant requested that she retain possession until after Christmas.

The landlord also requested recovery of the unpaid rent and/or loss of rent for the period of July 15, 2017 through to December 31, 2017. The landlord submitted that the Order of Possession will take a number of days to enforce and the next rental period would commence tomorrow. The landlord indicated that she may be successful in re-renting the unit starting in January 2018 at best. The tenant submitted that she understood the landlord would be moving into the rental unit.

### Analysis

Under section 26 of the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement. Where a tenant does not pay rent the landlord is at liberty to issue a 10 Day Notice to End Tenancy for Unpaid Rent. In this case, it was undisputed that the tenant owed the landlord rent of \$5,550.00 when the 10 Day Notice was served upon the tenant.

Upon receipt of a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the Notice or the tenant has five days to dispute the 10 Day Notice by filing an Application for Dispute Resolution. If a tenant files to dispute the 10 Day Notice, the tenant must be prepared to prove the rent was paid, the tenant had a lawful right to withhold rent, or the 10 Day Notice is otherwise invalid.

In this case, the tenant claims to have paid the outstanding rent after receiving the 10 Day Notice. This submission was disputed by the landlord and the tenant did not provide any corroborating evidence to support her version of events. Nor, did the tenant make reasonably detailed submissions concerning the alleged payment such as the date of payment or the exact amount of the payment. In hearing from both parties, I found the landlord's version of events to be more likely than the tenant's version. Therefore, I reject the disputed oral testimony that the tenant paid the landlord approximately \$7,000.00 after receiving the 10 Day Notice.

In light of the above, I uphold the 10 Day Notice and I dismiss the tenant's application that I cancel the Notice.

Since the 10 Day Notice was served on September 28, 2017, I find the earliest the effective date could have read was October 8, 2017. The 10 Day Notice indicates an effective date of October 7, 2017; however, an incorrect effective date does not invalidate a Notice to End Tenancy. Rather, the effective date automatically changes to comply with the Act, as provided under section 53 of the Act. Therefore, I find the tenancy came to an end on the effective date of October 8, 2017. Since the tenant remains in possession of the rental unit I find the landlord entitled to an Order of Possession. Considering the length of time the landlord has gone with receiving any monies from the tenant I find to delay the effective date for the Order of Possession would be unduly prejudicial to the landlord. Therefore, I provide the landlord with an order of Possession effective two days after service upon the tenant.

With respect to the landlord's monetary claim, I award the landlord recovery of unpaid rent and/or loss of rent from July 15, 2017 up to the date of December 31, 2017 as I find it unlikely the landlord will be successful in regaining possession and re-renting the unit before the end of December 2017. I further reward the landlord recovery of the \$100.00 filing fee and I authorize the landlord to retain the tenant's security deposit in partial satisfaction of the amounts awarded.

The landlord is provided a Monetary Order to serve and enforce upon the tenant calculated as follows:

Unpaid Rent:	
July 15, 2017	\$ 1850.00
August 15, 2017	1850.00
September 15, 2017	1850.00
Loss of Rent:	
October 15, 2017	1850.00
November 15, 2017	1850.00
December 15 – 31, 2017	925.00
Filing fee	<u>100.00</u>
Sub-total	\$10275.00
Less: Security Deposit	<u>(925.00)</u>
Monetary Order for landlord	\$ 9,350.00

Conclusion

The tenant's application has been cancelled.

The landlord has been provided an Order of Possession effective two (2) days after service upon the tenant.

The landlord has been authorized to retain the tenant's security deposit and has been provided a Monetary Order for the balance of \$9,350.00 to serve and enforce upon the tenant.

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 14, 2017

---

Residential Tenancy Branch