



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 559231 BC LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR

### Introduction

This hearing was convened by way of conference call concerning an application made by the landlord seeking an Order of Possession for unpaid rent.

The landlord was represented at the hearing by an agent who gave affirmed testimony and provided evidentiary material in advance of the hearing. The tenant also attended and gave affirmed testimony, and was accompanied by a person introduced as the tenant's roommate, who also gave affirmed testimony. The parties were also given the opportunity to question each other.

No issues with respect to service or delivery of evidence were raised, and all evidence provided has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

Has the landlord established that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was issued in accordance with the *Residential Tenancy Act*?

### Background and Evidence

**The landlord's agent** testified that he purchased the rental home and became the landlord of the tenant in November, 2017 and the tenant still resides in the rental unit. The landlord did not receive a written tenancy agreement from the previous owner, and testified that the tenancy is on a month-to-month basis. The landlord's agent attempted to have the tenant sign a tenancy agreement, but he refused.

Rent in the amount of \$450.00 per month is payable on the 1<sup>st</sup> day of each month. The landlord does not know whether or not the previous owner collected a security deposit or a pet damage deposit from the tenant or whether or not either was included in the Statement

of Adjustments when the property was purchased. The rental unit is one of two suites in the upper level of a house and the other is currently vacant. Previously, two more suites were rented in the lower level, however that level is now an unfinished basement.

The tenant failed to pay rent for December, 2017 and the landlord served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by posting it to the door of the rental unit on December 2, 2017. A copy of the page 1 of the 2-page notice has been provided as evidence for this hearing by the landlord. It is dated December 2, 2017 and contains an effective date of vacancy of December 12, 2017 for unpaid rent in the amount of \$450.00 that was due on December 1, 2017. The landlord also took a photograph of it and sent it to the tenant via text message. The landlord's agent testified that the tenant got both pages of the 2-page notice. He has both pages, and photocopied them to give the tenant, and stapled both of the landlord's copies together, but must not have scanned both pages to provide the evidence for this hearing.

The landlord had also served a 2 Month Notice to End Tenancy for Landlord's Use of Property on December 1, 2017.

The tenant has not paid the rent and has not served the landlord with an Application for Dispute Resolution disputing either of the notices.

When asked why the landlord's agent hadn't responded to any of the tenant's text messages, the landlord's agent responded that the tenants were argumentative and the landlord didn't want to get into an argument with them.

**The tenant** testified that the landlord wanted the tenant to sign a new tenancy agreement specifying that utilities are not included in the rent, but that's not the arrangement the tenant had with the previous landlord.

When the landlord purchased the rental home the tenant informed him of an agreement the tenant had with the previous landlord of full access to the basement for laundry and a workshop. The landlord removed belongings of the tenant and some from a previous tenant who intended to return to retrieve it. On November 9, 2017 a rubbish removal company arrived at 9:00 a.m. The tenant is in a wheelchair and had to go downstairs and into the back yard to confront them. They said they were told that everything, including sheds were to be removed.

The landlord also threw out the tenant's washer, which had laundry in it, and was put on the floor. As a result, the tenant didn't pay the rent.

The tenant also testified that he received the notice to end the tenancy but the tenant was ill and not able to dispute it. The tenant's health has been extremely bad and 5 days to dispute it wasn't enough time.

The landlord also served the tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property on December 1, 2017 for renovations, after telling the tenant that he wouldn't have to move out for renovations to be completed. The notice is effective February 2, 2018. Because the tenant received 2 notices, he didn't know which one took priority, and the tenant is entitled to one month of free rent.

**The tenant's roommate** testified that she has been living in the rental unit for a year and a half. The roommate is also a Care Aid for the tenant.

The tenant was confused about receiving 2 notices to end the tenancy, and the Residential Tenancy Branch advised that the landlord's removal of the tenant's belongings was against the law.

Usually the landlord arrives at the rental unit to collect rent in cash, but he didn't show up for December or January. He was there in November but not since. The roommate didn't know she could file a dispute on behalf of the tenant.

The tenants emailed the landlord, texted and called in November and December because they wanted to talk about the belongings that were removed, laundry services, heating, storage and everything that had been taken away from them. The landlord never responded to any of the messages.

**In rebuttal**, the landlord disagreed and testified that multiple times he knocked on the door in December and January but the tenant wouldn't answer. On December, 2017 the landlord sent a text message to the tenant saying both notices to end the tenancy were served and rent still wasn't paid.

The landlord does not seek the outstanding rent, however wants an Order of Possession effective January 31, 2018.

### Analysis

The *Residential Tenancy Act* states that once served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities the tenant has 5 days to pay the rent in full or dispute the notice by filing and serving the landlord with an Application for Dispute Resolution. If the tenant does neither in that 5 day period, the tenant is conclusively presumed to have accepted the end of the tenancy.

Where a tenant is served with a Two Month Notice to End Tenancy for Landlord's Use of Property, the same rule applies, but the tenant has 15 days to dispute it.

A tenant must pay the rent even if the landlord fails to comply with the *Residential Tenancy Act* or the tenancy agreement. In this case, the tenant admitted to withholding rent money, and didn't dispute either notice.

The landlord testified that both pages of the 2-page 10 Day Notice to End Tenancy for Unpaid Rent or Utilities were served on the tenant, although only 1 page has been provided as evidence for this hearing. Neither the tenant nor the tenant's roommate disputed that testimony, and therefore I accept it. The tenants didn't dispute the notice and didn't pay the rent, and therefore I find that the tenant is conclusively presumed to have accepted the end of the tenancy and the landlord is entitled to an Order of Possession.

The landlord has not made a claim for unpaid rent, however is content with an Order of Possession effective January 31, 2018, and I so order.

### Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord effective at 1:00 p.m. on January 31, 2018.

This order is final and binding and may be enforced.

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: January 26, 2018

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Residential Tenancy Branch