



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes            CNC, CNR, OPR, MNR, MDSD & FF

The Application for Dispute Resolution filed by the Tenant makes the following claims:

- a. An order to cancel the 10 day Notice to End Tenancy dated December 4, 2017
- b. An order to cancel the one month Notice to End Tenancy that was served on November 14, 2017.

The Application for Dispute Resolution filed by the landlord makes the following claims:

- a. An Order for Possession for non-payment of rent
- b. A monetary order in the sum of \$4000 for unpaid rent and damages
- c. An order to retain the security deposit
- d. An order to recover the cost of the filing fee

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. With the consent of the parties I amended the name of the Tenant as set out in the landlord's application so that it correctly identified the Tenant.

Neither party produced a copy of the one month Notice to End Tenancy. Both parties acknowledged it was served on the Tenant around the middle of November 2017.

I find that the 10 day Notice to End Tenancy was served on the Tenant by posting on December 4, 2017. Further I find that the Application for Dispute Resolution/Notice of Hearing filed by the landlord was served on the Tenant by mailing, by registered mail to where the Tenant resides on December 13, 2017. I find that the Amendment to the Application for Dispute Resolution was served by registered mail to where the Tenant resides on January 9, 2018.

### Issue(s) to be Decided:

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the 10 day Notice to End Tenancy dated December 4, 2017?

- b. Whether the tenant is entitled to an order cancelling the one month Notice to End Tenancy.
- c. Whether the landlord is entitled to an Order for Possession?
- d. Whether the landlord is entitled to A Monetary Order and if so how much?
- e. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- f. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence:

On October 23, 2017 the parties entered into a fixed term written tenancy agreement that provided that the tenancy would start on October 25, 2017 and end on October 31, 2018. The rent is \$2000 per month payable in advance on the first day of each month. The tenant paid a security deposit of \$1000 at the start of the tenancy.

The Tenant failed to pay the rent for December 2017 and January 2018 and the sum of \$4000 remains outstanding.

Tenant's Application:

The Tenant acknowledged that she has not paid the rent. She testified she has been helping her son who is seriously ill and has not been present in the rental unit for a period of time. Further, she testified she has experienced problems with leaks and harassment.

Section 26(1) provides that the Tenant must pay the rent even if the landlord has failed to do what they are required to do under the tenancy agreement until they have first obtained an order from an arbitrator authorizing the Tenant to withhold the rent.

I determined there is no basis for an order to cancel the 10 day Notice to End Tenancy Rent is owed for December 2017 and January 2018. The landlord used the approved form. As a result I dismissed the Tenant's application to cancel the 10 day Notice to End Tenancy. Further, I dismissed the Tenant's application to cancel the one month Notice to End Tenancy.

Order for Possession:

The Residential Tenancy Act provides that where an arbitrator has dismissed a tenant's application to cancel a Notice to End Tenancy, the arbitrator must grant an Order for Possession. As a result I granted the landlord an Order for Possession on 2 days notice.

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

Landlord's Application - Order of Possession:

For the above reasons I have granted an Order of Possession effective on 2 days Notice.

Analysis - Monetary Order and Cost of Filing fee:

I determined the tenant has failed to pay the rent for the month(s) of December 2017 and January 2018 and the sum of \$4000 remains outstanding. I determined the landlord has given sufficient notice of their intention to claim for all of last month as provided in the Application for Dispute Resolution and the Amended Application for Dispute Resolution. I granted the landlord a monetary order in the sum of \$4000 plus the sum of \$100 in respect of the filing fee for a total of \$4100.

Security Deposit:

I determined the security deposit plus interest totals the sum of \$1000. I ordered the landlord may retain this sum thus reducing the amount outstanding under this monetary order to the sum of \$3100.

Conclusion:

I dismissed the Tenant's application to cancel the one month Notice to End Tenancy and the 10 day Notice to End Tenancy. I granted an Order of Possession on 2 days notice. I ordered that landlords shall retain the security deposit of \$1000. In addition, I ordered that the Tenant pay to the Landlord the sum of \$3100.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

**This decision is final and binding on the parties.**

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 29, 2018

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Residential Tenancy Branch