



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MNDC, OPR, FF (Landlords' Application)  
CNR, MT, FF (Tenant's Application)

### Introduction

This hearing convened as a result of cross applications. In the Landlord's Application for Dispute Resolution filed on November 27, 2017 they sought an Order of Possession and monetary compensation based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on November 14, 2017 (the "Notice") as well as recovery of the filing fee.

In the Tenant's Application filed November 28, 2017 the Tenant sought to cancel the Notice, more time to apply to cancel the Notice pursuant to section 66 of the *Residential Tenancy Act* (the "Act") and recovery of the filing fee.

Both parties called into the hearing and were given a full opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### More Time

As the Tenant did not apply for dispute resolution within 5 days of receiving the Notice, it is necessary to consider section 66(1) of the Act and whether exceptional circumstances exist.

The Tenant confirmed that she was personally served the Notice on November 14, 2017. The Tenant stated that she made her application within five days of receipt of the Notice. She stated that she went to the Service B.C. office on November 18, 2017 and provided them with the required financial information. She stated that her original file was cancelled for reasons which she did not understand.

The application before me was filed on November 28, 2017.

Branch information confirms that that the Tenant filed a previous application to dispute the Notice to End Tenancy. It appears, based on the branch information, that the previous application was in fact cancelled by the Branch. I am unable to determine when the previous application was made, although it is clear that evidence was submitted by the Tenant on November 20, 2017.

I accept the Tenant's testimony that she originally applied on November 18, 2017. As she confirmed she was served on November 14, 2017, she applied within the required five days.

I therefore grant the Tenant more time pursuant to section 66 of the *Act* to make her application for Dispute Resolution filed November 28, 2017.

#### Issues to be Decided

1. Is the Landlord entitled to an Order of Possession and Monetary compensation from the Tenant?
2. Should the Notice be cancelled?
3. Should either party recover the filing fee?

#### Background and Evidence

The Landlord, S.S., testified as follows. She stated that the tenancy began September 12, 2017 when the Tenant picked up the keys. S.S. confirmed that the Tenant rented a self-contained home for the amount of \$500.00 payable on the first of the month. S.S. testified that the Tenant did not pay a security deposit although she offered a diamond emerald ring which was refused by the Landlord. Documentary evidence confirms the parties' discussions regarding the ring.

The Landlord further confirmed that there was no written tenancy agreement although the terms of the rent payable and the date of the first of the month was confirmed by messages sent through messages on a popular social media site (copies of which were provided in evidence).

S.S. testified that they agreed the Tenant would not have to pay rent for September if she "did a little clean up"; this was confirmed in the Landlord's documentary evidence. S.S. stated that the Tenant failed to pay rent for October and November 2017. The Landlord denied that she agreed the Tenant did not have to pay rent on time or that she communicated there was "no rush".

The Landlords issued the 10 Day Notice to End Tenancy on November 14, 2017 confirming that the amount of \$1,000.00 was due for October and November 2017.

S.S. confirmed that she personally served the Tenant on November 14, 2017.

S.S. confirmed that as of the date of the hearing \$1,500.00 was owe for rent. S.S. confirmed that the Tenant paid \$500.00 in December and \$500.00 in January, but failed to pay February 2018.

In support of her application for more time, the Tenant testified that the tenancy began October 1, 2017; she further confirmed monthly rent is payable in the amount \$500.00.

The Tenant testified that she did not pay her rent for October 2017 nor did she pay rent for November 2017. The Tenant alleged that the Landlord, S.S., told her there was "no hurry" and provided in evidence digital communication which she claimed confirmed the Landlords' agreement.

The Tenant then testified that there was no agreement as to the amount she was to pay for rent; simply that she "was going to pay 'up to \$500.00'". She then stated that she intended to pay \$250.00 on November 2, 2017, but "emergencies came up" as she got flat tires and had to use the money to pay for her tires".

The Tenant confirmed that she also did not pay rent for February 2018

The Tenant stated that in total she paid \$1,005.00 to the Landlords for her occupation of the rental unit: one payment made November 29, 2017, and one in January 1, 2018 and \$5.00 for February 1, 2018. The Tenant stated that she sent the \$5.00 for “use and occupancy”. She confirmed the Landlords have not accepted that \$5.00.

### Analysis

Based on the testimony and evidence before me, and on a balance of probabilities, I find as follows.

I find that the Tenant agreed to pay rent in the amount of \$500.00 per month commencing October 1, 2017. I accept the Landlords’ evidence in this regard, which is also confirmed by the documentary evidence submitted by the Landlords. I also note that when the Tenant gave her testimony in support of her request for more time she confirmed rent as \$500.00 per month.

I find the Tenant failed to pay rent for October 2017, November 2017 and February 2018. This was not disputed.

I do not accept the Tenant’s evidence that the Landlords agreed she did not have to pay rent for October and November, or that there was “no rush”. The Tenant testified that she was served the Notice on November 14, 2017; this Notice clearly indicates the Landlords expected rent when due.

Pursuant to section 26 of the *Act*, the Tenant must not withhold rent, even if the Landlord is in breach of the tenancy agreement or the *Act*, unless the Tenant has some authority under the *Act* to not pay rent. In this situation the Tenant had no authority under the *Act* to not pay rent.

**The Tenant’s Application to cancel the Notice is dismissed.**

**I therefore find that the Landlords are entitled to an Order of Possession effective two (2) days after service on the Tenant.** This Order may be filed in the Supreme Court and enforced as an Order of that Court.

I find that the Landlords have established a total monetary claim of \$1,600.00 comprised of \$1,500.00 in unpaid rent for October 2017, November 2017 and February 2018 in addition to the \$100.00 fee paid by the Landlords for this application. **I grant the Landlords an Order under section 67 for the balance due of \$1,600.00.** This Order may be filed in the Provincial Court (Small Claims Division) and enforced as an Order of that Court.

### Conclusion

The Tenant's Application is dismissed.

The Landlords application is granted. They are entitled to an Order of Possession effective two days after service and a Monetary Order in the amount of \$1,600.00 representing \$1,500.00 in unpaid rent and \$100.00 for recovery of the filing fee.

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: February 16, 2018

---

Residential Tenancy Branch