



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

Tenant: MT CNR  
Landlord: OPR MNR OPC FF

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on February 16, 2018.

The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the “Act”):

- more time to make an application to cancel the Landlord’s 10 Day Notice to End Tenancy (the 10-Day Notice); and,
- to cancel the 10-Day Notice for unpaid rent or utilities.

The Landlord applied for the following relief:

- An order of possession for unpaid rent or utilities (based on the 10-Day Notice);
- An order of possession based on a 1-Month Notice to End Tenancy for Cause (1-Month Notice); and,
- A monetary order for unpaid rent or utilities.

The Landlord and the Tenant’s Agent (referred to as the Tenant) attended the hearing and provided testimony.

The Landlord stated that although he received the Tenant’s Notice of Hearing package, amendment, and evidence later than he should have, he was willing to proceed with the Tenant’s application. The Landlord stated that he sent his cross application package and evidence to the Tenant on January 12, 2018, by registered mail. Pursuant to section 88 and 90 of the Act, I find the Tenant is deemed to have received this package on January 17, 2018, the fifth day after its registered mailing.

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

### Issue(s) to be Decided

1. Is the Tenant allowed more time to make an application to cancel the 10-Day Notice?
2. Is the Tenant entitled to have the 10-Day Notice cancelled?
3. Is the Landlord entitled to an order of possession for unpaid rent or utilities or based on a 1-Month Notice for Cause?
4. Is the Landlord entitled to a monetary order for unpaid rent or utilities?

### Background and Evidence

The Landlord provided a copy of the tenancy agreement into evidence. This agreement specifies that total monthly rent is \$1,600.00 per month and is payable on or before the first of the month. This agreement also specifies that the utilities the Landlord is seeking reimbursement for (Fortis Gas, BC Hydro, and regular water usage) are not included in monthly rent.

The Landlord stated he has served the Tenant with multiple Notices. The Landlord stated that he initially served the Tenant, by registered mail, with a 1-Month Notice as well as a 10-Day Notice. The Landlord provided tracking information to support that he sent these documents to the rental unit on October 24, 2017. The Tenant stated that it was another individual, who was living there at the time, who signed for that package and the Tenant did not actually receive them at that time. The Landlord stated that this 10-Day Notice was issued because the Tenant had not paid rent for October 2017 or several of his utility bills leading up to that time. The amount listed on the 10-Day Notice was \$2,344.38 for rent and utilities.

The Landlord stated that the Tenant owes rent as follows:

- \$1,600.00 x 5 months for October 2017 through to February 2018 = \$8,000.00
- LESS: \$800.00 partial rent payment on November 23, 2017 (e-transfer)
- **Total Rent still outstanding: \$7,200.00**

The Landlord provided a ledger and testimony to support that the Tenant also owes the following utility bills. He stated that the Tenant is responsible for half of the utilities and owes as follows:

- Fortis gas (September/October 2017) – \$62.91
- Fortis gas (November 2017) - \$58.25
- BC Hydro (August 2017) - \$130.95
- BC Hydro (September 2017) - \$262.00
- BC Hydro (October 2017) - \$134.06
- Water Utility (April-June 2017) – \$288.52
- **Total utilities outstanding: \$936.69**

The Landlord testified that the total amount outstanding at this time for rent and utilities is as above and totals **\$8,136.69**.

During the hearing, when I asked if the Tenant wanted to respond to the Landlords testimony and evidence on the amounts still owing, he stated that he is “not acknowledging or denying the amounts.” The Tenant further stated that he believed there was an agreement in place for the balance to be paid off within a few weeks. The Tenant further stated that he could not confirm for sure what payments had been made at this point as he did not have that information in front of him.

### Analysis

I note the Tenant has applied for more time to make an application to cancel the 10-Day Notice. Given that the Tenant applied late, I find the Tenant's request to have more time to apply to cancel the 10 Day Notice must be addressed before considering the remainder of the application.

Although the Tenant has stated that the Notice was signed for by another individual who was at the rental unit, and not the Tenant, I turn to section 88 and 90 of the Act. This portion of the Act specifies that the Tenant is deemed to have received the documents (sent by registered mail to the rental unit) 5 days after they were sent by the Landlord. The Landlord sent this registered mail package on October 24, 2017, and I find the Tenant is deemed to have received the 10 Day Notice on October 29, 2017, the fifth day after it was mailed.

Section 26 of the *Act* states that the Tenant has 5 days to pay all outstanding rent, or file an application for dispute. There is no evidence the Tenant paid any of the outstanding amounts or had a right to withhold these amounts. Further, the Tenant did not file an application to cancel the 10 Day Notice until December 4, 2017. At this time he also asked for more time to make this application. In consideration of the Tenant's request for more time to apply for cancellation of the 10 Day Notice, I turn to the following section of the *Act*:

Section 66 of the *Act* states the director may extend a time limit established under the *Act* only in exceptional circumstances. Residential Tenancy Policy Guideline #36 states that “exceptional” means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend the time limit. The Guideline goes on to say that exceptional implies that the reason for failing to do something at the time required is very strong and compelling.

I find the Tenant has provided insufficient evidence that any of his circumstances are exceptional, such that it warrants extra time to file an application.

As a result, I find that the Tenant is not entitled to more time to make an Application to cancel the Notice and his late Application is therefore dismissed.

As the Tenant's Application is dismissed, I must now consider if the Landlord is entitled to an Order of Possession pursuant to sections 55 of the *Act*. Under section 55 of the *Act*, when a Tenant's application to cancel a notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52, I must grant the Landlord an order of possession. Section 52 of the *Act* requires that any notice to end tenancy issued by a landlord must be signed and dated by the landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

I find that the 10 Day Notice issued by the Landlord meets the requirements for form and content and the Landlord is entitled to an order of possession. The Order of Possession will be effective 2 days after it is served on the Tenant.

Given my above findings with respect to the order of possession, it is not necessary for me to consider any of the remaining notices to end tenancy.

Next, I turn to the Landlord's request for a monetary order based on unpaid rent and utilities. Based on the testimony and documentary evidence, and on a balance of probabilities, I find as follows:

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.

With respect to the Landlord's request for a Monetary Order for unpaid rent and utilities, I find there is sufficient evidence from the Landlord to demonstrate that the Tenant owes and has failed to pay \$7,200.00 in rent and \$936.69 in unpaid utilities, as specified above. In making these findings, I note that the Tenant did not "acknowledge or deny" any of the Landlord's evidence on how much was owed for utilities, and in contrast to this, the Landlord provided an account ledger and testimony to clearly explain the amounts he was seeking. I find the Landlord has provided more detailed and compelling evidence on this matter.

Further, 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. In summary, I grant the monetary order based on the following:

<b>Claim</b>	<b>Amount</b>
Unpaid rent and utilities, as above:	\$8,136.69
Filing fee	\$100.00

<b>TOTAL:</b>	<b>\$8,236.69</b>
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Conclusion

The Tenant's request for more time to make an application to cancel the 10 Day Notice is dismissed.

The Landlord is granted an order of possession effective **two days 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.

The Landlord is granted a monetary order pursuant to Section 67 in the amount of **\$8,236.69**. This order must be served on the Tenant. If the Tenant fails to comply with this order the Landlord may file the order in the Provincial Court (Small Claims) 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: February 16, 2018

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Residential Tenancy Branch