



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CAPITAL PROPERTIES LTD. & RALPH HANNEKE  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR, FF

### Introduction

This matter dealt with an application by the Tenant to cancel a Notice to End Tenancy for unpaid rent and to recover the filing fee for this application.

The Tenant said he served the Landlords with the Application and Notice of Hearing (the “hearing package”) by personal delivery on December 8, 2017. Based on the evidence of the Tenant, I find that the Landlords were served with the Tenant’s hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

### Issues(s) to be Decided

1. Is the Tenant entitled to an order to cancel the Notice to End Tenancy?

### Background and Evidence

This tenancy started on May 1, 2017 as fixed term tenancy with an expiry date of August 31, 2017. The Tenant said the tenancy continued on a month to month basis after August 31, 2017. The Landlord said the tenancy ended on August 31, 2017. Rent is \$680.00 per month payable on the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$340.00 at the start of the tenancy.

The Landlord said he served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities dated December 2, 2010. The Landlord said he served the Notice on December 2, 2010 by personal delivery to the Tenant. The Effective Vacancy date on the Notice was December 12, 2010. The Landlord continued to say the tenancy ended August 31, 2017 and any rent paid since August 31, 2017 is for use and occupancy only. The Landlord said he did not continue the tenancy past August 31, 2017. The Landlord said he is requesting an Order of Possession if the Tenant’s application is unsuccessful.

Further K.S. said he is from the agency that subsidizes the Tenant's rent and they subsidized the Tenant's rent up to August 31, 2017. At that time his agency stopped the subsidy as their understanding was the tenancy had ended. K.S. continued to say payments made to the Landlord for September, October and November, 2017 were not rent payments but a payment to hold the rental unit for another client of their agency. K.S. said when the Tenant did not move out of the unit his agency stopped the holding/subsidy payments to the Landlord in November 2017.

The Landlord said there is unpaid rent for December 2017 on the amount of \$680.00, for January 2018 in the amount of \$680.00 and for February 2018 in the amount of \$680.00. The Landlord said the total amount of unpaid rent is \$2,040.00.

The Tenant said he agrees there is unpaid rent for December 2017 through to February 2018 in the amount of \$2,040.00 but it is a result of the Landlord stopping payments from the Ministry and the rent subsidy agency. The Tenant said he has tried to pay the rent but the Landlord has not accepted the rent and has stopped the Tenant's support agencies from paying the rent. The Tenant said it is not his fault the rent is not paid.

The Landlord said he has not refused any rent payments and he just told the Ministry and rent subsidy agency that the tenancy was over as per the tenancy agreement.

The Tenant said in closing that he has tried to pay the rent and the Landlord has done everything to stop the rent from being paid. The Tenant continued to say that he believes the tenancy continued on a month to month basis and it should continue.

The Landlord said he has not refused any rent payments and the tenancy ended on August 31, 2017. The Landlord requested an Order of Possession.

### Analysis

**Section 26(1)** of the Act says: a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

It is solely the Tenant's responsibility to pay the rent on time not matter where the funds for the rent are coming from. The Tenant does not have the right to withhold all or a portion of the rent from the Landlord when it is due. The Tenant gave affirmed testimony that there is unpaid rent of \$2,040.00. Therefore, I find the Tenant has not established grounds to be granted an order to cancel the Notice to End Tenancy. The

Landlord's 10 Day Notice to End Tenancy dated December 2, 2017 stands in effect. Consequently, I find pursuant to s. 55(2)(b) of the Act that the Landlord is entitled to an Order of Possession to take effect 2 days after service of the Order on the Tenant.

Conclusion

The Tenant's application to cancel the Notice to End Tenancy is dismissed without leave to reapply.

An Order of Possession effective 2 days after service of it on the Tenant has been issued to the Landlord. A copy of the Order must be served on the Tenant in accordance with the Act: the Order of Possession and may be enforced in the Supreme Court of British Columbia.

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 06, 2018

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Residential Tenancy Branch