



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding SUTTON-HYMARK REALTY  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      DRI, CNR, MNDC, RP, PSF, RR

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an order regarding a disputed additional rent increase, pursuant to section 43;
- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated February 2, 2018 ("first 10 Day Notice") and March 2, 2018 ("second 10 Day Notice") (collectively "two 10 Day Notices"), pursuant to section 46;
- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- an order requiring the landlord to make repairs to the rental unit, pursuant to section 33;
- an order requiring the landlord to provide services or facilities required by law, pursuant to section 65;
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65.

The tenant did not attend this hearing, which lasted approximately 14 minutes. The landlord's agent ("landlord") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that she was the property manager for the landlord company named in this application and that she had permission to speak on its behalf as an agent at this hearing.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application.

The landlord testified that the tenant was served with the landlord's written evidence package on March 5, 2018 by way of registered mail. The landlord provided a Canada Post tracking number verbally during the hearing and confirmed that the tenant signed for the package on March 5, 2018. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's written evidence package on March 10, 2018, five days after its registered mailing.

The landlord testified that the tenant was served with the landlord's first 10 Day Notice on February 2, 2018 and the second 10 Day Notice on March 2, 2018, both by way of posting to her rental unit door. The first 10 Day Notice indicates an effective move-out date of February 15, 2018 and the second 10 Day Notice indicates an effective move-out date of March 17, 2018. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's first 10 Day Notice on February 5, 2018, and the second 10 Day Notice on March 5, 2018, three days after each of their postings. I also note that the tenant applied to cancel the first 10 Day Notice in this application and the second 10 Day Notice in the amendment to this application.

#### Preliminary Issue – Dismissal of Tenant's Application

Rule 7.3 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* provides as follows:

7.3 Consequences of not attending the hearing: If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

In the absence of any evidence or submissions from the tenant, I order the tenant's entire application dismissed without leave to reapply.

Pursuant to section 55 of the *Act*, if I dismiss the tenant's application to cancel 10 Day Notices, the landlord is entitled to an order of possession if the notices meet the requirements of section 52 of the *Act*.

#### Issues to be Decided

Should the landlord's two 10 Day Notices be cancelled? If not, is the landlord entitled to an Order of Possession?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the landlord, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claims and my findings are set out below.

The landlord testified regarding the following facts. This tenancy began on February 1, 2016 for a one-year fixed term after which it became a month-to-month tenancy. Monthly rent in the current amount of \$1,425.00 is payable on the first day of each month, pursuant to a Notice of Rent Increase, dated October 15, 2017 ("NRI"), which was sent by regular mail to the tenant on the same date. The NRI provided the tenant more than three months' notice to raise the rent below the 4% allowable amount for 2018, from \$1,400.00 to \$1,425.00 per month, effective February 1, 2018. A security deposit of \$700.00 was paid by the tenant and the landlord continues to retain the deposit. A written tenancy agreement was signed by both parties and a copy was provided for this hearing. The tenant continues to reside in the rental unit.

The landlord issued the first 10 Day Notice for unpaid rent of \$1,425.00 due on February 1, 2018. The landlord stated that the tenant paid \$400.00 on February 2, 2018, and a receipt for this amount indicating "use and occupancy only" was mailed to the tenant on the same date. The landlord issued the second 10 Day Notice for unpaid rent of \$1,425.00 due on March 1, 2018. The landlord claimed that the tenant paid \$300.00 on March 2, 2018 and \$700.00 on March 21, 2018, and that receipts for these amounts were mailed to the tenant on the above dates indicating "use and occupancy only." The landlord seeks an order of possession based on both 10 Day Notices.

### Analysis

According to subsection 46(4) of the *Act*, a tenant may dispute a 10 Day Notice by making an application for dispute resolution within ten days after the date the tenant received the notice. The tenant was deemed to have received the first 10 Day Notice on February 5, 2018, and filed her application to dispute it on February 6, 2018. The tenant was deemed to have received the second 10 Day Notice on March 5, 2018, and filed her amendment to this application to dispute it on March 9, 2018. Therefore, she was within the five day time limits to dispute the two 10 Day Notices.

Section 26 of the *Act* requires the tenant to pay rent on the date indicated in the tenancy agreement, which in this case required the tenant to pay by the first day of each month.

On a balance of probabilities and for the reasons stated below, I accept the landlord's undisputed evidence at this hearing, as the tenant did not attend. The tenant failed to pay the full rent due of \$1,425.00 due on February 1, 2018 and March 1, 2018, within five days of being deemed to have received both 10 Day Notices.

I find that the rent for this rental unit and tenancy was \$1,425.00 per month, effective February 1, 2018, as per the landlord's NRI issued at least three months prior to the increase and within the 4% allowable rent increase for 2018, as this was the first rent increase during this tenancy. Although the tenant made partial rent payments in February and March 2018, she did not pay the full amounts of \$1,425.00 due for each month, and the landlord issued her rent receipts indicating "use and occupancy only" for the partial payments, therefore not reinstating the tenancy.

In accordance with section 46(5) of the *Act*, the failure of the tenant to pay the full rent or to appear at this hearing to pursue her application, led to the end of this tenancy on February 15, 2018, the effective date on the first 10 Day Notice. In this case, this required the tenant and anyone on the premises to vacate the premises by February 15, 2018.

Section 55(1) of the *Act* reads as follows:

*55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if*

- (a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and*
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.*

As noted above, I dismissed the tenant's application. I find that the landlord's two 10 Day Notices comply with section 52 of the *Act*. Accordingly, I find that the landlord is entitled to an Order of Possession effective seven (7) days after service on the tenant. The landlord requested that the tenant be given extra time to move out, specifically asking for seven days.

Conclusion

I grant an Order of Possession to the landlord effective seven (7) days after service on the tenant. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The tenant's entire application is dismissed without leave to reapply.

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: April 09, 2018

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Residential Tenancy Branch