



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding METRO VANCOUVER HOUSING CORPORATION  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR, FF

### Introduction

The landlord applies for an order of possession pursuant to a ten day Notice to End Tenancy for unpaid February 2018 rent, received by the tenants on February 7, 2018 and for a monetary award for unpaid rent.

The landlord states that no rent monies are owed as of the date of this application.

The listed parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing. The hearing was adjourned to permit the landlord to re-provide the tenants with its documentary evidence.

### Issue(s) to be Decided

Did the tenants fail to pay February rent. Has the landlord properly issued and served the Notice in issue? Did the tenants pay the rent within five days after receipt of the Notice?

### Background and Evidence

The rental unit is a three bedroom townhouse. There is a written tenancy agreement. The tenancy started over thirteen years ago; in December 2004. Currently the monthly rent is \$1187.00, due on the first of each month. The landlord holds a \$419.24 security deposit.

The tenants gave the landlord a rent cheque for February but the cheque was returned from the landlord's bank on February 6 marked "CANNOT TRACE." As it turns out, the tenants had written their cheque by mistake from a cheque book from an account in a different city; an account that had been closed.

The landlord issued a ten day Notice to End Tenancy for unpaid rent on February 7. Despite the denials of the tenant Ms. T., it is clear from her own email that she received the Notice on February 7.

She contacted the landlord by email on February 7 asking why the Notice had been issued when she had paid the rent. The landlord replied that the rent cheque had been returned "NSF" meaning not sufficient funds in the bank account to cover the amount of the cheque.

The tenants investigated but could not determine why the cheque had been returned "NSF." They did not re-pay the rent or apply to cancel the Notice, taking the position that rent had been paid. I am satisfied that they only realized they had used the wrong account when the cheque was presented by the landlord as evidence at this hearing.

In the meantime the landlord brought this application. Since then the tenants have paid the equivalent of all rent owed.

#### Analysis

It is apparent that the tenants made a mistake by giving the landlord a cheque drawn on an old, closed account.

A cheque is a "bill of exchange" and is governed by the federal *Bills of Exchange Act*, R.S.C., 1985, c. B-4. Section 95(1) of that Act provides:

**95 (1)** Subject to this Act, when a bill has been dishonoured by non-acceptance or by non-payment, notice of dishonour must be given to the drawer and each endorser, and any drawer or endorser to whom the notice is not given is discharged.

In this case the landlord gave the tenants notice that the cheque had been dishonoured but informed them that the reason was because it was "NSF", there were insufficient funds in the tenants' bank account. That was not correct. The cheque was returned marked "CANNOT TRACE." That phrase was not explained in the evidence presented but I assume it means that the account the cheque was drawn on could not be found.

The landlord points out that by the tenants' bank records, there were not sufficient funds to cover the cheque on February 1, had it been drawn on the tenants' current bank account. The evidence shows the tenants did have sufficient funds on February 2 and

so I am not satisfied that had they provided a rent cheque on the proper account it would have been dishonoured.

I find that in its duty to give the tenants notice of the dishonour of their cheque the landlord innocently mislead the tenants. Had they been properly notified that the cheque had been returned marked "cannot trace" they would likely have been able to determine the error and correct it within the five day period permitted by the ten day Notice.

In these circumstances the ten day Notice to End Tenancy cannot be maintained as having ended the tenancy under s. 46 of the *Residential Tenancy Act*.

#### Conclusion

The landlord's application is dismissed.

This decision was rendered verbally at the hearing and 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 17, 2018

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Residential Tenancy Branch