



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      Landlords: OPR, OPC, MNRL, MNRL-S, FFL  
Tenants: MT, CNC, CNR, FFT

### **Introduction**

This hearing dealt with cross Applications for Dispute Resolution filed by the parties.

The Tenants are seeking an order to cancel a 10-Day Notice to End Tenancy for Unpaid Rent; an order to allow additional time to file a dispute to cancel a notice to end tenancy; to cancel a One Month Notice to End Tenancy for Cause and to recover the filing fee for the Application.

The Landlords filed a claim for an order of possession based on unpaid rent, an order for possession for cause, a monetary order for unpaid rent, an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

An agent for the Landlords, J.W., appeared on behalf of the Landlords; P.S. was present on behalf of both Tenants. The parties gave sworn testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me. The Landlords had retained legal counsel, W.R., to be present for the hearing.

As both parties filed applications and these were scheduled to be heard at the same time, service of the applications and Notice of Hearing is not in issue.

As for the exchange of evidence the Landlords' legal counsel stated that he personally prepared all three packages of evidence with identical documents. The Residential Tenancy Branch received these documents on April 17, 2018 which is at least seven days prior to the date of the hearing as required by the Rules of Procedure. The Tenant stated that he was missing a document but confirmed that it was for a notice, to which he had filed a dispute previously. I am satisfied that all parties are in receipt of the Landlords' evidence in this matter. The Tenant testified that he had sent packages of evidence to the Landlords' agent and to the Residential Tenancy Branch and offered the Canada Post registered mail receipts as evidence. Neither this office nor the lawyer

representing the Landlords could confirm receipt of these packages of evidence from the Tenant.

I used the tracking numbers provided by the Tenant and confirmed that the package purported to be addressed to “RTO” at the address for the Residential Tenancy Branch in Burnaby was actually delivered to North Vancouver and signed by a Sarah S; the Burnaby office does not employ anyone by this name. I also checked the tracking number for the package purported to be addressed to “JW” in Richmond, but it was also delivered to North Vancouver and signed by a Karla K, who is not a known party to these applications. There is insufficient evidence to satisfy me that the Tenant properly served any package of documentary evidence to either this office or the Landlord for the purposes of this hearing.

The Tenant then testified that he had also uploaded additional documents one day prior to the hearing; these documents were located after the hearing and consisted of a proof of service form previously filed, a document from Escrow.com dated April 24, 2018 and a list of cases relied upon. Under rule 3.14 of the Rules of Procedure, documentary and digital evidence to be relied upon by the applicant must be received by this office and the respondent at least 14 days before the hearing. I find that these documents were provided too late for consideration, as it would have been prejudicial to the Landlords (who had not received copies). However, the sworn evidence of the Tenant described the nature of these documents and the Landlords’ legal counsel had opportunity to cross-examine that testimony.

Accordingly, 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. Should the 10-Day Notice to End Tenancy for Unpaid Rent be cancelled pursuant to section 46 of the *Residential Tenancy Act* (the “Act”) or should an Order for Possession be granted to the Landlord, pursuant to section 55 of the Act?
2. Should the Tenant be granted additional time to dispute a notice to end tenancy, pursuant to Section 66 of the Act?
3. Should the One Month Notice to End Tenancy for Cause be cancelled pursuant to section 47, or should an Order for Possession be granted to the Landlord, pursuant to section 55 of the Act?

4. Is the Landlord entitled to a monetary award for unpaid rent, pursuant to section 67 of the Act?
5. Is the Landlord entitled to retain the security deposit in partial satisfaction of the claim, pursuant to section 38 of the Act?
6. Is either party entitled to recover their respective filing fees pursuant to Section 72 of the Act?

#### Background and Evidence

The parties agreed that they entered into a two-year fixed tenancy agreement on November 4, 2017. The parties agreed to monthly rent of \$6,200.00 per month, with a rent incentive from November through February that reduced the amount payable to \$5,000.00 a month initially.

During the hearing, the Tenant questioned whether the Agent, Mr. W, had authority from the named Landlords who are the actual owners of the property. The Tenant confirmed that he had only dealt with Mr. W throughout the tenancy. Mr. W confirmed that he was the agent for the property owners and that he is not a real estate agent or a professional property manager.

The lawyer who was present for the hearing confirmed that he was hired by the property owners and that Mr. W was, in fact, the agent for those owners. The signed Tenancy Agreement clearly shows the property owners as the Landlords and Mr. W as their Agent. Mr. W confirmed that he has a letter verifying his appointed status as agent, but this was not submitted into evidence. I am satisfied that there is sufficient evidence to show that Mr. W (hereinafter referred in this decision as "Landlord") is duly authorized to act on behalf of the property owners described as Landlords in the Tenancy Agreement and that this was confirmed by their appointed legal counsel.

The Landlord stated that the agreed security deposit was \$3,100.00 but that only \$2,000.00 was eventually received and held as a deposit. There was some confusion over whether the Tenants had planned to have a dog at the property and so the Landlord accepted the lesser amount as a deposit with the understanding that no pets would be residing at the rental premises. The Landlord later started receiving many reports from neighbors that twelve dogs were living at the rental property. The Tenant states that he paid \$7,600.00 initially which would have been comprised of pro-rated rent for November of 2017 plus the full security deposit; however, no evidence was submitted by the Tenant to confirm this payment.

The Landlord submitted into evidence three cheques from the Tenant dated December 1 2017, January 1, 2018 and February 1, 2018. Each cheque was for the agreed-upon rent amount of \$5,000.00. The bank rejected all three cheques, and when viewed more closely, the cheques show the words "void" imprinted into the surface. The Landlord testified that this was reported to police and that fraud was suspected. The Landlord attempted to collect the rent and states that rent up to and including December 31, 2017 was eventually paid by the Tenant; however, the application claims unpaid rent of \$10,000.00 for the January 1<sup>st</sup> and February 1<sup>st</sup> dates. In addition, the Landlord claims that the March and April rent in the sums of \$6,200.00 per month have not been received.

The Tenant acknowledged the rent arrears, but he argued that he had attempted to make payment by cheque and by cash and that the bank refused to process any of the transactions. The Landlord replied by stating that the bank had contacted him reporting a suspicious transaction when the Tenant had attempted to pay \$7,000.00 all in \$20.00 bills. He argued that the bank was concerned about money laundering and refused the payment.

The Landlord provided a copy of the One Month Notice to End Tenancy and Proof of Service. The notice was dated and delivered on January 31, 2018 as the Tenant had been late with every rent payment and because the Landlord states he had received many complaints from neighbors about disruption and noise due to the presence of twelve dogs on the property. A petition had apparently been circulated with regards to these complaints, but no statement or witness was offered into evidence with respect to the noise and pet issues.

In response, the Tenant argued that this notice was not properly served. The Landlord had stated that the neighbor, SG, had accompanied him to the house and delivered the papers to the Tenant's wife on January 31, 2018, who is also listed as a tenant in the tenancy agreement. The wife refused to sign an acknowledgment of having received the document, and the Tenant stated that she had not received the notice but had instead received the Proof of Service documents which the Landlord and his neighbor had signed.

The Landlord confirmed this error and testified that he returned to the house within five minutes and delivered the One Month Notice to the Tenant's wife. The Tenant disputes this, but was not present at the time of the service; his wife did not testify or offer a statement into evidence.

Both the Notice and the Proof of Service with the witness acknowledgment were submitted into evidence. The Tenant did, in fact, contact the Residential Tenancy Branch about the One Month Notice to End Tenancy on February 14<sup>th</sup>, 2018. He then filed this application to dispute that notice and requested additional time to dispute it as he was past the ten day deadline to file a dispute.

The Landlord and Tenant confirm that they met at a shopping mall in Richmond to discuss the late and unpaid rent on February 9, 2018; at that time, both parties confirm that \$10,000.00 in rent for January and February was owing. The discussions broke down and the Tenant claims he was told the Landlord was serving an eviction and he decided to leave. At that point, the Landlord states that a 10-Day Notice to End Tenancy for unpaid rent (pursuant to section 46 of the Act) was placed inside the Tenant's sweater as he was refusing service; the Tenant states that he was chased and assaulted by the Landlord as the Landlord shoved documents down the back of his shirt, and that he found page 2 of a notice once he left the building.

The Tenant stated that he was aware that the Landlord was giving him a notice, and that unpaid rent was the issue. The Landlord argues that personal service was effected and provided the witness statement as evidence. The Tenant did apply within the five day timeline to dispute the 10-Day Notice, and records show that the initial application was amended by him to include this additional 10-Day Notice to vacate the premises.

The Tenant testified that he had paid \$22,400 into an online escrow account and argued that this was satisfactory payment of the outstanding rent. He further stated that they had found a new residence and planned to move out May 15 but would like to remain in the premises until that date. The parties agreed to attempt to mediate a settlement whereby payment would be made from this escrow account by a particular date and the Tenants could remain until their planned move-out date in May. However, the details could not be settled and the Landlord requested the hearing resume and that a decision be rendered. During cross-examination, the Tenant admitted he was calling in from the United Kingdom and that he had been deported from Canada by authorities.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

With respect to the 10-Day Notice to End Tenancy, the parties provided some conflicting evidence with respect to the service of the notice. Under Policy Guideline 12, paragraph 5, it states in part:

*"The methods permitted for service of documents generally are: by personally leaving a copy of the document with the person to be served...where a landlord is personally serving a tenant, the landlord must actually hand a copy of the document to the tenant. If the person declines to take a copy of the document, it may be left near the person so long as the person serving informs the person being served of the nature of the document being left near them. Documents can be personally served anywhere the party serving the document has legal access to, e.g. on a public street, in a restaurant or other facility open to the public."*

I have reviewed the Proof of Service which was signed by an independent witness and considered the testimony of both the Landlord and the Tenant. I have also considered the fact that the Tenant attended at the Residential Tenancy Office to dispute the two notices to end the tenancy, after each purported service. The Tenant admits that rent is in arrears and filed an application to dispute the 10-Day notice shortly thereafter, confirming his understanding of the notice to vacate the rental property. Accordingly, I find that the 10-Day Notice to End Tenancy was personally served on the Tenant by the Landlord and a witness in a public location on February 9, 2018.

I find that the Tenants have not paid all the rent due to the Landlord and the Tenants have provided no evidence that they had authority, under the Act to withhold any amount of rent, and therefore, the 10-Day Notice to End Tenancy is valid and should not be cancelled. Accordingly, I dismiss the Application of the Tenant.

The effective date of the 10-Day Notice to End Tenancy was February 19, 2018. Having found the Tenants have failed to pay rent when due, I find that the Landlord is entitled to an Order of Possession effective two days after service of this decision.

As the tenancy is terminated, there is no need to consider the One Month Notice to End Tenancy for cause. I make no findings of fact with respect to the validity of that notice.

I also find that the Landlord has established a total monetary claim of **\$22,400.00**, comprised of \$5,000.00 in rent due for each of January and February 2018 and \$6,200.00 in rent due for each of March and April, 2018. The Landlord was successful in his application, therefore I am awarding the filing fee of \$100.00.

The security deposit can be used to off-set the rent owing, under section 72(2)(b) of the Act. The Tenant suggested in his testimony that he had paid \$7,600.00 initially for a pro-rated rent and security deposit. However, the Landlord contends only \$2,000.00 was ultimately paid and received. The Tenant had no evidence to support his claim of that initial payment, while the Landlord produced various cheques as evidence that

payments were not being made as described, as the cheques were non-negotiable. I find that the Landlord collected the sum of \$2,000.00 based on a balance of probabilities. As the Landlord holds \$2,000.00 as a security deposit, I order the Landlord to retain this amount in partial satisfaction of the claim awarded. Accordingly, the Landlord is issued a monetary award of the balance, in the sum of \$20,500.00.

This order must be served on the Tenants and may then be filed in the Small Claims Division of the Provincial Court and enforced as an order of that court if the Tenants fail to make payment. Copies of this order are attached to the Landlord's copy of this Decision.

#### Conclusion

I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the tenant. Should the Tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I order the Landlord to retain the security deposit of \$2,000.00. I further grant an Order for payment of \$20,500.00 to the Landlord by the Tenants forthwith. The Tenants are jointly and severally liable for this amount.

The Tenant's application is dismissed without leave to re-apply.

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 30, 2018

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Residential Tenancy Branch