



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: CNR CNC MNDCT OPR

### **Introduction:**

Both parties attended the hearing and gave sworn testimony. The landlord said they served the tenant with a 10 Day Notice to End the Tenancy for non-payment of rent dated April 10, 2018 to be effective April 20, 2018 personally and with the One Month Notice to End Tenancy for cause dated April 10, 2018 to be effective May 10, 2018 by personally. The effective date on the One Month Notice is automatically corrected to May 31, 2018 pursuant to section 53 of the Act as a one month Notice must end the tenancy on the day before the rent is due. The tenant said they served the landlord with their Application for Dispute dated April 3, 2018 personally but they never got the One Month Notice to end Tenancy or they would have disputed that. They dispute the 10 Day Notice which they received. I find the landlord provided insufficient evidence of service of the One Month Notice so I dismiss the One Month Notice to End Tenancy for cause due to lack of proof of service. The tenant applies pursuant to sections 46 and 47 of *The Residential Tenancy Act* (the Act)

- a. to cancel both the Notices to End Tenancy.
- b. For a rent refund and the return of the security deposit (total \$2900) as the landlord did not provide the services or facilities agreed upon.

**Issues:** Is the tenant entitled to any relief?

### **Background and Evidence:**

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. This was a very contentious hearing with the parties denying events related by each other and a paucity of relevant evidence. The original tenancy began on February 5, 2018, rent is \$1200 a month and a security deposit of \$500 was paid. The landlord testified that the tenant failed to pay the full rent for March and April 2018 and was served with a Notice to End the Tenancy on April 10, 2018 and that the rent is still outstanding. The parties agreed that a government agency pays \$450 of the tenants' rent each month. The landlord says that is all she received.

The tenants contend they paid the balance of \$750 in cash each month but the landlord issues no receipts. They provided money mart statements showing withdrawals of \$1130 on February 21, 2018 and \$1133 on March 21, 2018 and allege they paid the \$750 cash from these withdrawals.

The landlord agrees she does not issue receipts. However, in evidence are some text messages between the parties. On March 16, the tenant texted that she was just feeding her baby and then going to the bank to get [the landlord's] money. On March 17, 2018, the landlord texted she needed her rent and the tenant replied that they had been sick for the past few days and when she could safely go out of the house, she will go to the bank machine down the road. She complains all her clothes and the baby's clothes are dirty and they are trying to wash them in the bathtub. The landlord replied that she had messaged her yesterday she was going to get the rent money. The tenant denied she had sent another text message regarding a domestic problem but it has the same format with her initial at the top. However, this message is not considered as evidence as it relates to the Notice to End Tenancy for cause which the tenant states they never received. The landlord said she is owed rent of \$750 for March and \$750 for April; a government agency had paid \$450 each month to the landlord but she said she did not receive the balance in cash as the tenant alleges.

**Analysis:**

The 10 Notice to End a Residential Tenancy which the tenants received is based on non-payment of rent. The Residential Tenancy Act permits a tenant to apply to have the Notice set aside where the tenant disputes that rent is owed or where the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from the rent. I find the tenants disputed the Notice in time. However, I find the weight of the evidence is that they did not pay the balance of \$750 rent in March and April 2018. Although no receipts are provided by the landlord which violates section 26(2) of the Act, I find the landlord's testimony regarding non payment most credible and prefer it to the evidence of the tenant. I find the text messages on March 16, 2018 and March 28, 2018 support the landlord's credibility as she is asking for rent and the tenant is making excuses. I find two money mart withdrawals do not support the tenant's allegation that they used part of them to pay rent; they might have been used for other things. I dismiss the tenants' application to cancel the 10 Day Notice to End Tenancy for unpaid rent. Pursuant to section 55 of the Act, I find the landlord is entitled to an Order of Possession in these circumstances. The landlord will receive an Order of Possession effective May 31, 2018.

In respect to the tenants' claims for compensation for lack of services promised but not provided, I find insufficient evidence to support their claim. They allege the landlord did not provide them with the brief agreement that the landlord drew up which provides no services. It is unsigned so I find this is not reliable evidence so it is disregarded in the Decision. They allege that they saw the advertisement in the laundromat but they provided no copy of it in evidence. I find a text message in February at the commencement of the tenancy supports the landlord's credibility that no services were provided. The tenant asks by text if cable and internet are included and the landlord replies that they need to order it for they [the landlord's] don't have cable in their home. The tenant replied, "OK thank you so much". In the same message string the landlord asks for February rent and the tenant again says she is sick. Again in the texts about rent, when the tenant says she is sick and washing clothes in the bathtub, she never mentions it was supposed to be included. I find insufficient evidence that the landlord ever promised laundry, internet and cable. I dismiss their claim for compensation.

In respect to their security deposit, I find the landlord has the obligation to abide by section 38 of the Act and either return it or claim against it within 15 days of the later of the tenants' vacating and providing their forwarding address in writing. I dismiss this portion of their claim as it is premature and give them leave to reapply if necessary after they have vacated and provided their forwarding address in writing to the landlord.

**Conclusion:**

I grant the landlord an Order for Possession effective May 31, 2018. The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement. I dismiss the tenant's application. Their filing fee was waived.

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: May 17, 2018

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Residential Tenancy Branch