



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CASCADIA APARTMENT RENTALS  
and [tenant name suppressed to protect privacy]

## **DECISION**

<u>Dispute Codes</u>	Tenant:	CNR, MT
	Landlord:	OPRM-DR, FFL

### Introduction

This decision pertains to cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”).

The Tenant’s Application for Dispute Resolution was made on May 18, 2018 (the “Tenant’s Application”). The Tenant applied for an order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”), and an order extending the time to apply for Dispute Resolution to cancel the Notice.

The Landlord’s Application for Dispute Resolution was made on May 16, 2018 (the “Landlord’s Application”). The Landlord applied for an order of possession and a monetary order for unpaid rent. As the Landlord testified during the hearing that the Tenant paid the rent for May 2018, I hereby amend the Landlord’s Application to exclude the claim for a monetary order for unpaid rent. I shall address the order of possession as it pertains to the Tenant’s Application.

The Tenant, her advocate, and the Landlord’s agent attended the hearing before me and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The parties did not raise any issues of service.

While I have reviewed all oral and documentary evidence submitted, only relevant evidence pertaining to the issues of this application is considered in my decision.

I note that Section 55 of the Act requires that when a tenant applies for dispute resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the Act.

### Issues to be Decided

1. Is the Tenant entitled to an order extending the time to cancel the Notice?
2. Is the Tenant entitled to an order cancelling the Notice, pursuant to section 46 of the Act?
3. If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an order of possession, pursuant to section 55 of the Act?
4. Is the Landlord entitled to a monetary order for recovery of the filing fee?

### Background and Evidence

The Tenant entered into a tenancy on July 1, 2013, with monthly rent of \$1,250.00. A copy of the written tenancy agreement was entered into evidence.

The Tenant failed to pay rent when it was due on May 1, 2018. The Landlord testified that they issued the Notice on May 4, 2018, with an end tenancy date of May 15, 2018, for failure to pay rent for May 2018. The Landlord testified that they served the Tenant the Notice by attaching a copy to the Tenant's door. The Tenant applied for dispute resolution on May 18, 2018. Neither the Tenant nor her Advocate presented any evidence, testified, or made any submissions in respect of their request for an order extending the time to cancel the Notice.

The Landlord testified that the Tenant ended up paying most of the rent on May 28 and a small remainder of the rent on May 31. The Tenant paid rent for June 2018. The Landlord testified that they issued receipts for the late rent payments and for the on-time rent payment of June, but did not testify regarding whether the receipts were "use and occupancy" only types of receipts. No copies of receipts were submitted into evidence by either party.

The Tenant testified that she has been paying rent to the Landlord for the past 5 years by way of electronic funds transfer. However, she ran into some financial difficulty resulting in an NSF when attempting to pay rent for May. The Tenant made attempts to contact the Landlord in order to pay by different means, but that "nobody [was] returning

any of our calls.” Ultimately, the Tenant contacted the Landlord and planned to pay by money order.

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

The Landlord served the Notice on May 4, 2018. As the Tenant did not provide any testimony regarding service, I find that pursuant to section 90 of the Act the Tenant is deemed to have received the Notice on May 7, 2018. Further, pursuant to section 53 (1) of the Act the effective date of the end of tenancy is corrected to be May 17, 2018. The Notice states that “You [the tenant] have five (5) days to pay the rent and utilities (if applicable) to the landlord or file an Application for Dispute Resolution with the Residential Tenancy Branch.”

Under 46(4) of the Act, the Tenant was required to either pay the overdue rent or dispute the Notice by making an application for dispute resolution, within 5 days after receiving the notice. The Tenant had until May 12 to either pay the overdue rent or file for dispute resolution. The Tenant did neither.

The Tenant has requested an extension of time to make an application for dispute resolution, as they did not file for dispute resolution until May 18, 2018. The Notice had a deemed end of tenancy date of May 17.

Section 66(3) of the Act states that an arbitrator “must not extend the time limit to make an application for dispute resolution to dispute a notice to end a tenancy beyond the effective date of the notice.” As the Tenant did not apply for dispute resolution until after the effective date of the notice (i.e., May 17, 2018), I cannot extend the time limit in which the Tenant may file an application for dispute resolution and dismiss that aspect of the Tenant’s claim without leave to reapply.

Section 26 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent.

The Tenant did not dispute that she paid rent late. In this case, rent was paid almost a

month late. The Tenant testified that she tried unsuccessfully to contact the Landlord and that the Landlord did not return her phone calls. It is a tenant's responsibility to pay rent when it is due. The Tenant had a copy of the Notice on which the Landlord's address for service is listed. The Tenant could have mailed the rent to the Landlord's address as listed, but did not.

Taking into consideration the fact that the Tenant did not end up paying rent until May 28, 2018, I am not persuaded that the Tenant made reasonable efforts to pay the rent as is required under the Act, or that the Landlord made it impossible for the Tenant to pay when the rent was due (as was argued), or within 5 days of receiving the Notice.

Taking into consideration all of the oral and documentary evidence, and applying the law to the facts, I find on a balance of probabilities that the Landlord has met the onus of proving the ground on which they issued the Notice, namely, that the Tenant did not pay rent as required by the tenancy agreement and the Act. Given the above, I dismiss the Tenant's application for an order to cancel the Notice, without leave to reapply.

Section 52 of the Act requires that any notice to end tenancy issued by a landlord must (1) be signed and dated by the landlord, (2) give the address of the rental unit, (3) state the effective date of the notice, (4) state the grounds for ending the tenancy, and (5) be in the approved form.

I find the Notice issued by the landlord on May 4, 2018, complies with the requirements set out in section 52.

Section 55(1) of the Act states that if a tenant applies to dispute a landlord's notice to end tenancy and their Application for Dispute Resolution is dismissed or the landlord's notice is upheld the landlord must be granted an order of possession if the notice complies with all the requirements of Section 52 of the Act.

Pursuant to section 55(1) of the Act, I grant the Landlord an order of possession of the rental unit, effective seven (7) days from the date on which the order is served on the Tenant.

As the Landlord was successful in their application, I grant them a monetary order for recovery of the filing fee in the amount of \$100.00.

Conclusion

I dismiss the Tenant's application for an order to extend the time to cancel the Notice.

The Landlord is entitled to an order of possession effective seven (7) days from the date on which the order is served on the Tenant, pursuant to section 55 (1) of the Act. This order may be filed in and enforced as an order of the Supreme Court of British Columbia.

I grant the Landlord a monetary order in the amount of \$100.00.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: July 9, 2018

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Residential Tenancy Branch