



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding TEIVAH HOLDINGS CORP.  
and [tenant name suppressed to protect privacy]

## **REVIEW HEARING DECISION**

Dispute Codes      CNR, MT, FF

### Preliminary matters

This hearing was convened as a result of the Landlord's request for a review of a decision date May 2, 2018. The Landlord's review request was on the grounds that the Tenant received the decision of May 2, 2018 based on fraudulent information. The Landlord's request for a review hearing was awarded on May 15, 2018.

### Introduction

This matter dealt with an application by the Tenant for more time to make the application, to cancel a Notice to End Tenancy for Unpaid Rent and to recover the filing fee for this proceeding.

### Issues(s) to be Decided

1. Is the Tenant entitled to more time to make the application?
2. Is the Tenant entitled to an order to cancel the Notice to End Tenancy?
3. Is the Tenant entitled to recover the filing fee?

### Background and Evidence

This tenancy started on February 1, 2018 as a one year fixed term tenancy. Rent is \$6,000.00 per month payable on the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$3,000.00 on January 28, 2018. The Tenant said a move in condition inspection report was completed at the start of the tenancy.

At the start of the hearing the Arbitrator reviewed the events that have taken place with regard to this tenancy. The review was done so that all parties would agree on the history of the situation. The Arbitrator outlined the course of events as follows:

1. March 28 the Landlord made an application to end the tenancy for unpaid rent by way of the Direct Request process. This is an Ex Parte process that only reviews paper submissions from the Landlord.
2. March 29, 2018 the Tenant made an application for more time to make an application and to dispute the 10 Day Notice to End Tenancy for Unpaid Rent dated March 14, 2018.
3. April 5, 2018 the Adjudicator issued a decision on the Landlord's Direct Request application in favor of the Landlord. The decision found there was unpaid rent and the Tenant had not disputed the 10 Day Notice for Unpaid Rent within the time requirements of the Act, therefore the Landlord was awarded an Order of Possession effective two days after it was served on the Tenant.
4. April 9, 2018 the Tenant was served with the Order of Possession and the tenancy was to be ended on April 11, 2018.
5. April 16, 2018 the Tenant made an application to review the decision of April 5, 2018. The Tenant's application for review consideration was dismissed and the decision and Order dated April 5, 2018 were upheld.
6. May 2, 2018 the Tenant's application to dispute the 10 Day Notice to End Tenancy for Unpaid Rent was heard. Only the Tenant attended this hearing and based on the Tenant's testimony and evidence the 10 Day Notice to End Tenancy for Unpaid Rent was cancelled and the tenancy was ordered to continue as agreed in the tenancy agreement.
7. May 15, 2018 the Landlord made an application to review the decision of May 2, 2018. The reason for the review was based on fraud by the Tenant. The Landlord was successful and a review hearing was scheduled for today, July 11, 2018.
8. June 22, 2018 the Tenant applied for a correction to his review consideration application and his application was dismissed and the review decision of April 16, 2018 was upheld.

The Landlord's Counsel said the tenancy ended with the decision of the Direct Request decision dated April 5, 2018 and the subsequent applications by the Tenant are only to delay the ending of the tenancy. Counsel said the Landlord did not attend the Hearing on May 2, 2018 because they had an Order of Possession, therefore they thought the tenancy had ended and the Tenant's application had no effect. Counsel said the Order of Possession dated April 5, 2018 is valid as the Tenant did not pay the full rent and the Tenant did not dispute the 10 Day Notice to End Tenancy for Unpaid Rent within the 5 day limit as indicated on page two of the 10 Day Notice to End Tenancy for Unpaid Rent and Section 46 (4) of the Act. As well Counsel said the Landlord has a decision from the Residential Tenancy Branch dated April 5, 2018 stating the tenancy will end two

days after the Order of Possession is served to the Tenant. The Landlord's Counsel said the Tenant was served with the Order of possession on April 9, 2018 so the tenancy should have ended on April 11, 2018.

The Landlord's counsel continued to say that all payments the Tenant has made since the 10 Day Notice to End Tenancy for Unpaid Rent was issued, have been documented as for "Use and Occupancy Only" so the Landlord has not re-instated the tenancy due to payments by the Tenant. Further the Counsel said the rents for April, May, June and July 2018 have been ordered by the Supreme Court of British Columbia to be deposited into Counsel's trust account so technically the rent has not been paid for all of these months. The Landlord's Counsel requested the Tenant's application be dismissed and the original decision and Order of Possession dated April 5, 2018 be upheld in full effect.

The Tenant said that his March rent payment was returned NSF and then his replacement payment was delayed because he did not have the correct address of the Landlord. The Tenant said he did pay the full amount of rent by the end of March 2018 and he believed the Landlord was fine with the late payments.

The Arbitrator who also conducted the Tenant's May 2, 2018 hearing said he did not recall the Tenant providing any information about the decision for the Landlord's Direct Request application and the issuing of an Order of Possession at the May 2, 2018 hearing. The Tenant said he thought he mentioned that the Landlord was going to file a Direct Request application but he did not tell the Arbitrator that he had been served an Order of Possession dated April 5, 2018 on April 9, 2018.

The Arbitrator said if he was aware that an Order of Possession had been issued on April 9, 2018 to the Tenant to end the tenancy, the Tenant would not have been successful at the May 2, 2018 hearing because the tenancy had already ended.

### Analysis

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

The Tenant did not have the right under the Act to withhold part or all of the rent for March 2018, therefore I find in favour of the Landlord for unpaid rent for March 2018. Consequently, I dismiss the Tenant's application to cancel the 10 day Notice to End Tenancy for Unpaid Rent dated March 14, 2018. Pursuant to section 55 of the Act the Landlord is awarded an Order of Possession. As the Landlord has already obtained an Order of Possession dated April 5, 2018, I uphold that Order in full effect. Further as the Tenant has already been served the Order of Possession dated April 5, 2018 and the Order has an effective vacancy date of 2 days after service, I accept the Order was served April 9, 2018; therefore I find the order is effective immediately.

In addition as this hearing was granted based on the Landlord's Review Consideration Application and it was on the grounds that the Tenant receiving and May 2, 2018 decision based on fraud; I find that the Tenant's testimony in the May 2, 2018 hearing influenced the hearing by omitting information and by giving selective testimony. The Review Consideration Arbitrator found the Tenant to have been fraudulent and I concur with that decision because omission by design is fraud.

### Conclusion

The Tenant's application is dismissed without leave to reapply.

The decision and Order of Possession dated April 5, 2018 are upheld and in full effect.

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: July 11, 2018

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Residential Tenancy Branch