



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

Tenant: CNR, MT  
Landlord: OPR, MNRL-S, FFL

### Introduction

This hearing dealt with applications from both the tenant and the landlord pursuant to the *Residential Tenancy Act* (the *Act*).

The tenant applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (10 Day Notice) pursuant to section 46 of the *Act*;
- more time to cancel the 10 Day Notice pursuant to section 66 of the *Act*.

The landlord applied for:

- an Order of Possession for Unpaid Rent, pursuant to sections 46 and 55 of the *Act*;
- a Monetary Order for unpaid rent pursuant to section 67 of the *Act*; and
- recovery of the filing fee for this application from the tenant pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

### Preliminary Issue – Service of Notice of Dispute Resolution Proceeding Documents

I confirmed service of the notice of dispute resolution proceeding documents with both parties. The tenant testified that she was in receipt of the landlord's application for dispute resolution, however she stated that she had not served the landlord with her application for dispute resolution. The tenant testified that based on discussions with the landlord she believed that neither party wanted to pursue proceedings through the Residential Tenancy Branch arbitration process, if the tenant were to pay the rent owing for May 2018 within 10 days of receiving the landlord's 10 Day Notice, which was received by the tenant on May 3, 2018.

The tenant found that she did not have the rent money that was owed within the 10 days, and therefore she went ahead with filing a dispute application against the landlord's 10 Day Notice

on May 17, 2018. The landlord testified that he only learned about the tenant's application when he contacted the Residential Tenancy Branch on June 15, 2018 to ask questions about his application.

Based on the sworn testimony of the parties, I find that the tenant was served with the landlord's notice of dispute resolution proceeding package in accordance with section 89 of the *Act*. I find that the landlord was not served with the tenant's notice of dispute resolution proceeding package, and therefore the tenant's application is dismissed in its entirety with leave to reapply. However, it should be noted that liberty to reapply may be moot based on the outcome of this matter as noted below.

### Analysis

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute, and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing the parties discussed the issues between them, turned their minds to compromise and achieved a resolution of their dispute.

Both parties agreed to the following final and binding settlement of all issues currently under dispute at this time:

1. This tenancy will end at 1:00 p.m. on September 1, 2018, by which time the tenant and any other occupants will have vacated the rental unit.
2. By 5:00 p.m. on July 13, 2018, the tenant will pay the landlord a total amount of \$2,580.00 in full satisfaction of the outstanding rent owed for the month of July 2018.
3. The landlord will provide the tenant with a receipt for the rent payment, and any subsequent rent payments made by the tenant, by noting the receipt with the condition that the payments are "for use and occupancy only".
4. The tenant will pay rent for the month of August 2018 as per the agreed upon terms of the tenancy agreement and in accordance with the *Act*.
5. This tenancy ends by way of this settlement and the parties agree that: the landlord's 10 Day Notice dated May 3, 2018, is cancelled and of no further force or effect; the landlord's application for dispute resolution in its entirety is cancelled; and the tenants' application for dispute resolution in its entirety is cancelled.
6. Both parties agreed that the terms of this settlement as outlined above constitute a final and binding resolution of the tenant's and the landlord's applications and all issues currently under dispute at this time, and that they agreed free of any duress or coercion.

The parties are still bound by all of the rights, responsibilities, terms and conditions of the tenancy agreement, the *Act*, and the associated regulations.

In this matter, only the landlord submitted a request to recover the filing fee for the application from the other party. The landlord agreed to bear the cost of the filing fee for the application, therefore this part of his claim is dismissed without leave to reapply.

### Conclusion

To give effect to the settlement reached between the parties and as advised to both parties during the hearing, I issue to the landlord the attached Order of Possession to be served on the tenant by the landlord **only** if the tenant fails to vacate the rental unit by 1:00 p.m. on September 1, 2018 or abide by any other term of this settlement. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Further to this, I issue to the landlord the attached Monetary Order in the amount of \$2,580.00 to be served on the tenant by the landlord **only** if the tenant fails to pay the landlord the full amount of \$2,580.00 by 5:00 p.m. on July 13, 2018. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court. If the tenant only makes a partial payment and not the total amount, this partial payment must be accounted for if the landlord is enforcing the Monetary Order.

The landlord's 10 Day Notice to End Tenancy for Unpaid Rent, dated May 3, 2018, is cancelled and is of no force or 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 12, 2018

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Residential Tenancy Branch