



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding EQUITEX PROPERTY MANAGEMENT  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR, PSF, RP, ERP, OLC,

### Introduction

On February 14, 2017, the Tenant made an Application for Dispute Resolution to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, ("the 10 Day Notice") dated February 10, 2017.

The matter was set for a conference call hearing. The Tenant and Landlord attended the teleconference hearing.

At the start of the hearing I introduced myself and the participants. The hearing process was explained. The evidence was reviewed and confirmed received by each party. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

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.

### Preliminary and Procedural Matters

The Residential Tenancy Branch Rules of Procedure permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. For example, if a party has applied to cancel a notice to end tenancy, or is applying for an order of possession, an Arbitrator may decline to hear other claims that have been included in the application and the Arbitrator may dismiss such matters with or without leave to reapply.

I find that the most important matter to determine is whether or not the tenancy is ending due to non-payment of rent. The Tenants other claims are dismissed with leave to reapply.

### Issues to be Decided

- Did the Tenant dispute the 10 Day Notice within the required timeframe?
- Was rent owing to the Landlord on September 1, 2018?
- Is the Landlord entitled to an order of possession?

### Background and Evidence

The parties testified that the tenancy began on June 1, 2014, and is on a month to month basis. Rent in the amount of \$1,154.00 is due to be paid by the 1<sup>st</sup> day of each month. The Tenant paid the Landlord a security deposit of \$525.00 and a pet damage deposit of \$525.00.

The Landlord testified that the Tenant failed to pay all the rent owing under the tenancy agreement for the month of September 2018.

The Landlord testified that the Tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated September 19, 2018 ("the 10 Day Notice") by posting it to the Tenant's door on September 19, 2018. The Landlord provided a proof of service document of a witness observing the posting of the 10 Day Notice. The Act provides that a document posted to a door is deemed delivered on the third day after it is posted.

The 10 Day Notice states that the Tenant has failed to pay rent in the amount of \$613.00 which was due on September 1, 2018. The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenant has five days to dispute the Notice.

The Tenant testified that she received the 10 Day Notice laying near her door on September 23, 2018.

The Tenant disputed the 10 Day Notice using the Residential Tenancy Branch ("the RTB") online dispute process. The Tenant's application was submitted on September 27, 2018. The Tenant requested a waiver of the filing fee. The online application process provides the following information to applicants who select to waive the filing fee.

### Supporting proof

You must now provide proof that supports the income information you provided. It is recommended that you provide proof now, but if you can't upload it right now you can submit it later online or in person at any Service BC Office or the Burnaby Residential Tenancy Branch Office. Keep in mind it must be received within three days of submitting your application or before the deadline for disputing a notice to end your tenancy expires (if applicable), whichever is earlier.

Can't provide this? [Choose another payment option.](#)

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The online application process provides the following information to applicants who request a fee waiver and do not provide proof of income:

### Payment not completed!

You have requested a fee waiver but have not provided your proof of income. **If you have already submitted your proof of income or have paid the filing fee, please disregard this message.** Submit your proof of income in person at any [Service BC Office](#) or the Burnaby Residential Tenancy Branch office at #400 - 5021 Kingsway. If you cannot provide proof of income, you can [log back in to your application](#) using your BCeID and make the payment instantly with a credit card, Visa Debit or MasterCard Debit. You can also pay in person at any [Service BC Office](#) or the Burnaby Residential Tenancy Branch office at #400 - 5021 Kingsway.

The online application process also provides the following information to an applicant:

*Your application payment is not complete! If you do not complete payment by September 30, this application will be abandoned and you will have to file again.*

***Some applications must be submitted within a certain amount of time, like claims against a deposit or to cancel a Notice to End Tenancy. You must complete payment or submit proof of income for a fee waiver before the application deadline expires. Timelines for filing applications can only be extended in exceptional circumstances. [my emphasis]***

The Tenant testified that she received an email saying that there was information missing. She testified that she provided her fee waiver information on September 27, 2018.

The RTB Case Management System indicates that on October 2, 2018, the Tenant was informed to provide her income information. The information the Tenant provided was not approved due to no source of income provided. On October 3, 2018 the Tenant's application was accepted.

### September 2018 Rent

The Tenant testified that on August 13, 2018, she attended the Landlord's business office to make a rent payment and intentionally pay a surplus. She testified that she paid the Landlord \$1,800.00 in cash. She testified that earlier that day she withdrew \$2,500.00 from her bank with the intention to pay the Landlord more rent than she owed. The Landlord provided her a rent receipt in the amount of \$1,800.00. The Tenant provided a copy of her banking record showing that she withdrew \$2,500.00 on August 13, 2018. The Tenant provided a copy of the receipt indicating the Landlord received \$1,800.00 on August 13, 2018.

The Tenant testified that the Landlord previously issued her a 10 Day Notice in error. She testified that in May she received a 10 Day Notice to End Tenancy for Unpaid Rent from the Landlord and she then provided proof that the rent had been paid. The Tenant testified that the Landlord's records are often inaccurate.

The Tenant testified that the Landlord did not call her about an error in the amount of rent that was received on August 13, 2018.

In reply, the Landlord testified that the receptionist Ms. V.P. received the cash payment from the Tenant and provided a receipt in the amount of \$1,800.00. The Landlord testified that the receptionist made an error on the amount of cash received.

Ms. V.P. testified that after the Tenant made the payment, and after she issued the receipt, she recounted the amount of cash and found that she only received \$1,180.00. She testified that she had a co-worker re-count the cash and confirmed that the amount received was \$1,180.00. She testified that she made an error.

On September 19, 2018, the Landlord issued a letter to the Tenant stating that the receipt issued to her for \$1,800.00 was incorrectly written. The Landlord stated the amount they received was \$1,180.00 and that \$613.00 is due for September 2018 rent.

The Landlord issued the 10 Day Notice on September 19, 2018, indicating the Tenant has failed to pay \$613.00 that was due on September 1, 2018. The Landlord testified that the \$613.00 was not received within 5 days of when the Tenant receiving the 10 Day Notice. The Landlord testified that the \$613.00 has not been paid.

The Landlord is seeking an order of possession for the rental unit.

## Analysis

The RTB Rules of Procedure provides information on how to submit an application and when an application is considered to be made:

Section 2.4 Application for Dispute Resolution provides:

*Applications for Dispute Resolution must be submitted through the Online Application for Dispute Resolution or to the Residential Tenancy Branch directly or through a Service BC Office with the required fee or fee waiver documents. Applicants who submit an Online Application for Dispute Resolution and choose to pay the fee or submit fee waiver documents in person must complete payment within three days of submitting the application. **This three-day period for completing payment is not an extension of any statutory timelines for making an application.***

Section 2.6 Point at which an Application is considered to be made:

***The Application for Dispute Resolution has been made when it has been submitted and either the fee has been paid or when all documents for a fee waiver have been submitted to the Residential Tenancy Branch directly or through a Service BC Office. The three-day period for completing payment under Rule 2.4 is not an extension of any statutory timelines for making an application.***

*If payment is not completed or if all documents for a fee waiver are not submitted within three days as required, the application will be considered abandoned. To pursue the claims, the applicant must submit a new application—this does not provide an extension of time for any statutory timelines.*

Section 46(5) of the Act provides:

If a Tenant who has received a notice under this section does not **pay the rent or make an application for dispute resolution** in accordance with subsection (4), the Tenant

*(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and*

*(b) must vacate the rental unit to which the notice relates by that date.*

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find that the Tenant is deemed to have received the 10 Day Notice on September 22, 2018, the third day after it was posted to her door.

I find that the Tenant waited until the fifth, and last day possible, to dispute the 10 Day Notice. I find that the Tenant was provided information that her application was incomplete and that some applications must be submitted within a certain amount of time; like claims to cancel a Notice to End Tenancy.

I find that the Tenant did not provide the information for the fee waiver until October 2, 2018. I find that the Tenant's application was not made until October 2, 2018, and is therefore six days late.

While I find that the Tenant's application to dispute the 10 Day Notice was late, I have turned my mind to whether or not the Tenant owed the Landlord \$613.00 on September 1, 2018. The burden of proof rests with the Landlord.

I find that the Tenant withdrew cash from the bank on the date the rent payment was made to the Landlord and I find that she had sufficient cash to pay the Landlord \$1,800.00. I find that the receipt is strong evidence from the Tenant that she paid the Landlord \$1,800.00.

The Tenant refuted that the Landlord called her to discuss the issue prior to the Landlord issuing the Landlord's letter and 10 Day Notice on September 19, 2018. There is insufficient evidence from the Landlord that the Landlord contacted the Tenant to discuss the issue. I find that it would be reasonable to expect that the Landlord would attempt to correct their alleged mistake prior to issuing a 10 Day Notice.

The Landlord did not refute the Tenant's testimony that the Landlord made a mistake by issuing a 10 Day Notice for unpaid rent in May.

I find that the testimony from Ms. E.V. does not outweigh the evidence from the Tenant that she paid the Landlord \$1,800.00. The receipt in the amount of \$1,800.00 is the stronger evidence.

I find that there is insufficient evidence from the Landlord to establish that the Tenant owed \$613.00 for unpaid September rent.

The 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated September 19, 2018, is set aside.

The tenancy will continue until ended in accordance with the Act.

Conclusion

The Tenant's application to dispute a 10 Day Notice was filed late; however, I find that there is insufficient evidence from the Landlord to establish that the Tenant owed \$613.00 for unpaid September rent.

The 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated September 19, 2018, is set aside.

The tenancy will continue until ended in accordance with the Act.

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: November 14, 2018

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Residential Tenancy Branch