



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant filed under the Residential Tenancy Act (the “Act”), to cancel a 10-Day Notice to End Tenancy for Unpaid Rent or Utilities, dated September 1, 2018. The matter was set for a conference call.

Both the Tenant and the Landlord attended the hearing and were each affirmed to be truthful in their testimony. The Tenant and the Landlord were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

I have reviewed all evidence and testimony 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.

### Issues to be Decided

- Should the Notice, dated September 1, 2018, be cancelled?
- If not, is the Landlord entitled to an Order of Possession?

### Background and Evidence

The Landlord testified that he purchased the property and inherited the tenancy as of December 1, 2017, neither party was able testified as to when the tenancy started. The Parties agreed that rent in the amount of \$900.00 is to be paid by the first day of each month, and the Landlord is holding a security deposit and pet damage deposit for this tenancy; however, the Landlord was unclear as to how much he was holding. The

Tenant testified that she believes that the Landlord is holding \$1,100.00 in deposits for her tenancy.

The Landlord testified that he served the Notice to the Tenant on September 1, 2018, in person. The Notice has an effective date of September 10, 2018, and an outstanding rent amount of \$2,000.00; consisting of \$200.00 for July 2018, \$900.00 for August 2018 and \$900.00 for September 2018. The Landlord also testified that the Tenant had paid \$1,500.00 in rent on September 7, 2018, \$460.00 in rent on September 9, 2018, and \$40.00 in rent on September 26, 2018. The Landlord testified that the Tenant is now up to date in her rent payments but that the Tenant has a history of paying her rent late and that he had not received the outstanding rent as indicated on the Notice within five days as required and that he wishes to end the tenancy. The Landlord is requesting that the Notice is enforced and that an Order of Possession is issued.

The Tenant testified that she had miss placed the Landlord's banking information and had been unable to reach the Landlord until September 1, 2018, when he delivered the notice, to get his deposit information to send him the rent. The Tenant also testified that she had believed that she had paid her rent within the required timeline and was also unaware she had filed to dispute the Notice late. The Tenant confirmed that she submitted her application to dispute the Notice on September 19, 2018.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I find that the Landlord served the Notice to End Tenancy on September 1, 2018, by personally serving it to the Tenant and that the Tenant was in receipt of the Notice that same day. I also find that the amount of rent outstanding for this tenancy, as of September 1, 2018, the date of the Notice, was \$1,100.00. As the September rent, that had been included in this Notice was not past due until September 2, 2018.

Section 46 of the *Act* requires that upon receipt of a Notice to End Tenancy for Non-payment of Rent a tenant must, within five days, either pay the amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does not do either of these things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice under section 46(5).

**Landlord's notice: non-payment of rent**

- 46** (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.
- (2) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.
- (3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.
- (4) Within 5 days after receiving a notice under this section, the tenant may
- (a) pay the overdue rent, in which case the notice has no effect,
  - or
  - (b) dispute the notice by making an application for dispute resolution.
- (5) 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.

Accordingly, I find that the Tenant has until September 6, 2018, to either pay the outstanding amount as indicated on the Notice or file an Application for Dispute Resolution with this office to dispute the Notice.

I accept the testimony for both parties that the Tenant paid the outstanding rent on September 7, 2018, and filed to dispute the Notice on September 19, 2018. I find that the Tenant did not pay the rent or file to dispute the Notice within the legislated timeline and was conclusively presumed to have accepted that the tenancy would end on the effective date of the Notice. Therefore, I must dismiss the Tenant's application to cancel the Notice.

Section 55 of the *Act* states that a landlord may request an order of possession if a notice to end the tenancy has been given by the landlord and the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired.

**Order of possession for the landlord**

**55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 *[form and content of notice to end tenancy]*, and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I have reviewed the Notice to End Tenancy, and I find the Notice complies with section 52 of the Act. As I have dismissed the Tenant's application, pursuant to section 55 of the Act, I must grant the Landlords an order of possession to the rental unit.

I find that the Landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective two days after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenants.

Conclusion

I grant an **Order of Possession** to the Landlord effective **two days** after service of this Order on the Tenant. 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.

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 1, 2018

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Residential Tenancy Branch