



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      DRI, CNR, OLC, PSF, LRE, FFT

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- an order regarding a disputed additional rent increase pursuant to section 43; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

At the commencement of the hearing, I clarified the correct spelling of the landlord's last name, which is as appears above as opposed to the surname identified by the tenant in the tenant's original application for dispute resolution. With the agreement of the parties, I corrected the landlord's surname accordingly and in accordance with the powers delegated to me pursuant to the *Act*.

As the tenant confirmed that he was handed the 10 Day Notice by the landlord or the landlord's representative on October 1, 2018, I find that the tenant was duly served with

this Notice in accordance with section 88 of the *Act*. As the landlord confirmed that the tenant handed their spouse a copy of the tenant's dispute resolution hearing package on October 5, 2018, I find that the landlord was duly served with this package in accordance with section 89 of the *Act*. Since the tenant confirmed that they had received copies of the landlord's written evidence, I find that the landlord's written evidence was served in accordance with section 88 of the *Act*.

### Issues(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession? What is the correct monthly rent for this tenancy? Should any other orders be issued with respect to this tenancy? Is the tenant entitled to recover the filing fee for this application from the landlord?

### Background and Evidence

This month-to-month tenancy began on January 14, 2016. Although no written tenancy agreement was entered into by the parties, the parties agreed that the initial monthly rent charged by the landlord was \$800.00, payable in advance by the first of each month. The landlord continues to hold the tenant's \$400.00 security deposit paid when this tenancy began.

The parties agreed that the landlord increased the monthly rent on August 1, 2018 to \$1,000.00. The parties agreed that the landlord did not issue the required Residential Tenancy Branch's Notice of Rent Increase Form to the tenant, giving the tenant three month's notice of any rent increase. The landlord testified that they were not aware at the time that any increase in rent could only be raised in accordance with the amounts established by the Residential Tenancy Branch each year, and that any increase in rent had to be provided using the Notice of Rent Increase Form.

The landlord's 10 Day Notice identified \$2,000.00 in rent owing from this tenancy as of October 1, 2018. Since the issuance of that Notice, the landlord said that another month's rent had become owing. At the hearing, the landlord said that if the increase in rent was undertaken without the required Notice of Rent Increase Form having been used, and if it also exceeded the increases allowed by the legislation, the amount of unpaid rent currently owing would be \$2,400.00. The tenant did not disagree with the landlord's claim that \$2,400.00 in rent remained owing at this time.

### 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 engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

Both parties agreed to the following final and binding resolution of their dispute:

1. Both parties agreed that this tenancy will end by 1:00 p.m. on November 19, 2018, by which time the tenant will have surrendered vacant possession of the rental unit to the landlord.
2. The tenant agreed to pay the landlord a total of \$2,000.00, an amount which included the return of the tenant's security deposit.
3. The tenant agreed to provide the landlord with their forwarding address when the tenant returns the keys to the landlord at the end of this tenancy.
4. Both parties agreed that this settlement agreement constituted a final and binding resolution of the issues involving the landlord's 10 Day Notice, including the outstanding rent, the tenant's application to dispute the rent increase, and that they did so of their own free will and without any element of force or coercion.

### Conclusion

To give effect to the settlement reached between the parties and as discussed at the hearing, I issue the attached Order of Possession to be used by the landlord if the tenant does not vacate the rental premises in accordance with their agreement. The landlord is provided with these Orders in the above terms and the tenant must be served with an Order in the event that the tenant does not vacate the premises by the time and date set out in their agreement. 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.

In order to implement the above settlement reached between the parties, I issue a monetary Order in the landlord's favour in the amount of \$2,000.00. I deliver this Order to the landlord in support of the above agreement for use in the event that the tenant does not abide by the terms of the above settlement. The landlord is provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

As the landlord's monetary Order takes into account the crediting of the security deposit towards the rent that remains owing from this tenancy, I find that the security deposit has been returned to the tenant in its entirety. There is no remaining security deposit for this tenancy.

I order the tenant to provide the landlord with their forwarding address when the tenant surrenders the keys to this rental unit to the landlord.

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 16, 2018

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Residential Tenancy Branch