



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding MAINSTREET EQUITY CORP and  
[tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes:** CNR 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; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

JN appeared as agent for the landlord, and had full authority to do so. 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.

The landlord's agents confirmed receipt of the tenant's dispute resolution application ('Application'). In accordance with section 89 of the *Act*, I find that the landlord was duly served with the Application. All parties confirmed receipt of each other's evidentiary materials and that they were ready to proceed.

The tenant confirmed receipt of the 10 Day Notice for Unpaid Rent, dated December 10, 2018, which was posted to her door on December 10, 2018. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's 10 Day Notice on December 13, 2018, three days after its posting.

The landlord indicated at the beginning of the hearing that there was an error in the tenant's application with the business name of the landlord, as well as the spelling of the landlord's agent. Both parties confirmed they had no issue with correcting the tenant's application to reflect the proper name of the landlord, and the landlord's agent.

Accordingly, the names of the landlord and landlord's agents were amended to reflect the proper spelling as confirmed in the hearing.

### **Preliminary Issue –Tenant's Late Evidence**

The tenant submitted an additional page of evidence as part of her application, which was not served on the landlord until 7 days before the hearing. The landlord's agent was opposed to admitting this late evidence as it was not served within RTB Guidelines, but confirmed that the landlord did receive and review this page of evidence.

Rule 3.14 of the RTB's Rules of Procedure establishes that a respondent must receive evidence from the applicant not less than 14 days before the hearing.

This evidence was not served within the timelines prescribed by rule 3.14 of the Rules. Where late evidence is submitted, I must apply rule 3.17 of the Rules. Rule 3.17 sets out that I may admit late evidence where it does not unreasonably prejudice one party. Further, a party to a dispute resolution hearing is entitled to know the case against him/her and must have a proper opportunity to respond to that case.

In this case, the landlord's agent testified that they had received the tenant's late evidence, which they had an opportunity to review. Although the tenant did not serve this evidence within the timelines prescribed by rule 3.14, I find that there is no undue prejudice to the landlord by admitting the tenant's late evidence. Thus I exercise my discretion to admit the tenant's late evidence.

### **Issues to be Decided**

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Is the tenant entitled to recover the filing fee for this application?

### **Background and Evidence**

This fixed-term tenancy began on March 1, 2018. Rent is currently set at \$975.00 per month, payable on the first of the month. The tenant currently still resides at the rental home.

The landlord issued the 10 Day Notice on December 10, 2018 as the tenant failed to pay the December 2018 rent. The tenant does not dispute that she did not pay rent on December 1, 2018 or within 5 days of receiving the 10 Day Notice. The tenant testified in the hearing that due to numerous issues, including illness and problems with her bank account, the tenant was late with her rent payment.

The landlord's agent testified in the hearing that the tenant was repeatedly late in her rent payments since the beginning of this tenancy on March 1, 2018. The landlord testified that they had attempted to assist the tenant with a payment plan, but the tenant continued to have issues paying rent on time. The landlord testified that since the 10 Day Notice was issued on December 10, 2018, the tenant paid the December 2018 rent, but not until October 20, 2018. The landlord included a copy of the receipt for this payment in their evidentiary materials, which shows the payment was for use and occupancy only. The landlord testified that the tenant has not paid for January or February 2019 rent as of the hearing date. The tenant testified in the hearing that she was "hoping the February rent didn't bounce". The tenant testified that the late evidence submitted was a doctor's note to support that she suffered from medical issues that required her to remain in the rental unit.

### **Analysis**

Section 26 of the Act, in part, states as follows:

#### **Rules about payment and non-payment of rent**

**26** (1) 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.

Section 46(4) of the Act provides that "within 5 days after receiving a notice under this section, the tenant may pay the overdue rent, in which case the notice has no effect". The tenant was deemed to have received the 10 Day Notice on December 13, 2018, and the last day to pay the full amount was December 18, 2018. I accept the undisputed testimony of the landlord's agent that although the tenant failed to pay the full outstanding rent within the 5 days allowable under the Act. I find that the tenant did not have the right to deduct all or a portion of the December 2018 rent. I, therefore, dismiss the tenant's application to cancel the 10 Day Notice dated December 10, 2018.

Section 55(1) of the Act reads as follows:

**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 find that the 10 Day Notice issued by the landlord is valid, and complies with section 52 of the *Act*.

I find that the landlord is entitled to a two (2) day Order of Possession against the tenant, pursuant to section 55 of the *Act*. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As the tenant was unsuccessful in her application, I find that the tenant is not entitled to recover the \$100.00 filing fee paid for this application. The tenant must bear the cost of this filing fee.

### **Conclusion**

I dismiss the tenant's application to cancel the landlord's 10 Day Notice as well as the tenant's application to recover the filing fee. I find that the landlord's 1 Month Notice is valid and effective as of December 23, 2018. As the tenant has not moved out, I, therefore, grant an Order of Possession to the landlord effective two **days after service of this Order** on the tenant.

Should the tenant and any occupant 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: February 5, 2019

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Residential Tenancy Branch