



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding SHELTERWOOD RESOURCE MANAGEMENT LTD. and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes**

Tenant: CNC, CNR, MNDCT, MNRT, MT, FFT  
Landlord: OPR, MNRL, FFL

### **Introduction**

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the Residential Tenancy Act (the “Act”).

The Tenant’s Application for Dispute Resolution was made on March 11, 2019 (the “Tenant’s Application”). The Tenant applied for the following relief, pursuant to the Act:

- An order cancelling a One Month Notice for Cause dated February 26, 2019 (the “One Month Notice”);
- more time to extend the time limit established by the Act, to make an Application for dispute resolution to obtain an order cancelling the One Month Notice;
- an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated March 6, 2019 (the “10 Day Notice”);
- a monetary order for damage or compensation;
- a monetary order for cost of emergency repairs; and
- an order granting the recovery of the filing fee.

The Landlord’s Application for Dispute Resolution was made on March 26, 2019 (the “Landlord’s Application”). The Landlord applied for the following relief, pursuant to the Act:

- a monetary order for unpaid rent;
- an order of possession for unpaid rent; and
- an order granting recovery of the filing fee.

The Tenant, the Tenant's advocate B.T. as well as the Tenant's witness L.L. attended the hearing at the appointed date and time. The Landlord's Agents R.F. and L.F. also attended the hearing. The parties provided affirmed testimony at the start of the hearing.

The Tenant testified that she served her Application and documentary evidence package to the Landlord by registered mail on March 15, 2019. The Tenant stated that she served more evidence to the Landlord by registered mail on April 12, 2019. R.F. confirmed receipt of both mailings. L.F. testified that she served the Tenant with the Landlord's Application and documentary evidence by registered mail on March 27, 2019. L.F. stated that she sent the Tenant three more packages of evidence as well as an amendment to the Application by registered mail on April 8, 12 and 18, 2019. The Tenant confirmed receipt of each mailing. Pursuant to section 88 and 89 of the Act, I find the above documents were sufficiently served for the purposes of the Act.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. 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 Matters

The Landlord made an amendment to their Application on April 10, 2019, increasing the monetary amount of unpaid rent to include April 2019 as well as May 2019 in anticipation that May 2019 rent would not be paid. As such, the Landlord's Application was amended to reflect the increased amount of unpaid rent sought to be \$4,500.00.

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, 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 issue to determine is whether or not the tenancy is ending due to a fundamental breach of the tenancy agreement regarding payment of rent as well as for cause.

The Tenant's request for a monetary order for damage or compensation, a monetary order for the cost of emergency repairs, as well as an order for the Landlord to comply with the Act, are dismissed with leave to reapply.

Issue(s) to be Decided

1. Is the Tenant entitled to an order cancelling a One Month Notice for Cause dated February 26, 2019, pursuant to Section 47 of the *Act*?
2. Is the Tenant entitled to more time to extend the time limit established by the Act, to make an Application for dispute resolution to obtain an order cancelling the One Month Notice dated February 26, 2019, pursuant to Section 66 of the *Act*?
3. Is the Tenant entitled to an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated March 6, 2019, pursuant to Section 46 of the *Act*?
4. Is the Tenant entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?
5. Is the Landlord entitled to an order of possession in relation to unpaid rent, pursuant to Section 46 and 55 of the *Act*?
6. Is the Landlord entitled to a monetary order for unpaid rent, pursuant to Section 67 of the *Act*?
7. Is the Landlord entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on July 1, 2017. Currently, rent in the amount of \$1,500.00 is due to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$750.00 which the Landlord currently holds.

The Tenant has applied to cancel a One Month Notice dated February 26, 2019. L.F. testified that she served the One Month Notice by posting it to the Tenant's door on February 26, 2019 with an effective vacancy date of March 31, 2019. The Landlord issued the One Month Notice on the following bases:

*"The rental unit /site must be vacated to comply with a government order"*

The Tenant testified that she received the One Month Notice posted to her door on February 26, 2019. The Tenant submitted her application to cancel the One Month Notice on March 11, 2019. As such, the Tenant has applied for more time to extend the

time limit established by the Act to dispute the One Month Notice. A copy of the One Month Notice was submitted in support.

The Tenant stated she was aware that she had 10 days to file for dispute resolution to in order to cancel the One Month Notice; however, she testified that on March 1, 2019 the Tenant experienced an incident involving the neighbouring tenant who proceeded to yell at her children as well as utter threats to the Tenant. Furthermore, on March 2, while on a ski strip with her children, the Tenant indicated that she once again witnessed her neighbour acting inappropriately. The Tenant stated that she reported the incidents to the Police. Lastly, the Tenant testified that when she returned home from her ski trip, it appeared as though someone had broken into her home and stole the One Month Notice she had filed in her cabinet.

L.F. testified that in addition to the One Month Notice she served to the Tenant, they have also served the Tenant in person on March 6, 2019 with a 10 Day Notice for Unpaid Rent dated March 6, 2019 with an effective vacancy date of March 16, 2019. The Landlord submitted a copy of the 10 Day Notice in support.

The 10 Day Notice states that the Tenant has failed to pay rent in the amount of \$1,500.00 which was due on March 1, 2019. The Notice informed the Tenant that the 10 Day Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenant had five days to dispute the Notice.

L.F. testified that the Tenant has also failed to pay rent when due for April and May 2019. As such, the Landlord is seeking an order of possession as well as monetary compensation in the amount of \$4,500.00 for unpaid rent.

The Tenant confirmed that she received the 10 Day Notice in person on March 6, 2019. The Tenant confirmed that she has not paid the Landlord rent for March, April and May 2019. The Tenant applied to cancel the 10 Day Notice on March 11, 2019 as she feels as though the Landlord has breached the *Act* as she has been harassed by the neighbouring tenant since August of 2018 and that the Landlord has not done anything about it.

### Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

The Landlord served the One Month Notice by posting it to the Tenant's door on February 26, 2019. The Tenant confirmed that she received the One Month Notice on February 26, 2019. Accordingly, I find the One Month Notice was sufficiently served pursuant to Section 88 of the Act.

Section 47(4) of the Act provides that a Tenant who receives a notice to end tenancy for cause has 10 days after receipt to dispute the notice. Further, section 47(5) of the Act confirms that failure to dispute the notice in the required time period results in the conclusive presumption the tenant has accepted the tenancy ends on the effective date of the notice, March 31, 2019.

After receiving the One Month Notice on February 26, 2019, the Tenant had until March 8, 2019 to make an application for dispute resolution. The Tenant did not dispute the One Month Notice until March 11, 2019. I find that the Application was made outside of the 10 days permitted under Section 47(4) of the Act.

The Tenant has applied for more time to file his Application. Pursuant to Section 66 of the Act, the director may extend a time limit established by the Act only in exceptional circumstances.

The Tenant testified that she was unable to submit her Application within the 10 days permitted under the Act due to several incidents involving her neighbour yelling at her children, threatened the Tenant, as well as her rental unit had been broken into while she was on a ski trip.

I find that there is insufficient evidence before me to support an exceptional circumstance preventing the Tenant from making an Application within the time limits set out in Section 47(4) of the Act. I find that the incidents outlined by the Tenant took place on March 1 and 2, 2019. I find that the Tenant was still able to attend a ski trip and that she had opportunities to apply for dispute resolution before and after the incidents taking place leading up to the March 8, 2019 deadline to file her application. For these reasons I dismiss the Tenant's Application for more time.

I find the Tenant was out of time to dispute the One Month Notice and is conclusively presumed to have accepted the tenancy ended on the effective date of the One Month Notice, March 31, 2019.

In light of the above, I dismiss the Tenant's Application to cancel the One Month Notice dated February 26, 2019, without leave to reapply.

When a Tenant's application to cancel a notice to end tenancy is dismissed and the notice complies with section 52 of the *Act*, section 55 of the *Act* requires that I grant an order of possession to a Landlord. Having reviewed the One Month Notice, submitted into evidence, I find it complies with section 52 of the *Act*.

I grant the Landlord an order of possession, which will be effective two (2) days after service on the Tenant.

The Landlord has applied for an order of possession for unpaid rent as well as monetary compensation relating to unpaid rent in the amount of \$4,500.00.

Section 26 of the *Act* states that a Tenant must pay the rent when it is due under the tenancy agreement, whether or not the Landlord complies with the *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 of the *Act* states 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.

Section 46(4) says that within 5 days after receiving a notice under this section, the tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution.

L.F. testified that she served the Tenant in person on March 6, 2019 with a 10 Day Notice dated March 6, 2019 with an effective vacancy date of March 16, 2019. The Tenant confirmed having received the 10 Day Notice on March 6, 2019. I find the 10 Day Notice was sufficiently served pursuant to Section 88 of the *Act*.

Accordingly, pursuant to section 46(4) of the *Act*, the Tenant had until March 11, 2019, to either pay rent in full or dispute the 10 Day Notice by filing an application for dispute resolution.

The Tenant applied to cancel the 10 Day Notice on March 11, 2019. The Tenant testified that she has not paid rent to the Landlord for March, April and May 2019 as she feels as though the Landlord has not complied with the *Act*, due to the fact that she continues to be harassed by her neighbour.

I find that the Tenant is in breach of Section 26 of the Act by not paying rent when due to the Landlord whether or not the Landlord complies with the Act. As such, I dismiss the Tenant Application to cancel the 10 Day Notice without leave to reapply.

As the Tenant was not successful with her Application, I find that she is not entitled to the return of her filing fee.

The Landlord has already been granted an order of possession relating to the One Month notice; therefore, their Application for an order of possession relating to the 10 Day Notice is now moot.

The Landlord has also applied for monetary compensation relating to the unpaid rent. As this claim is directly related to the 10 Day Notice, it was considered in the Landlord's Application.

I find the Landlord has established an entitlement to a monetary award for unpaid rent for March, April and May 2019 in the amount of \$4,500.00. Having been successful, I also find the Landlord is entitled to recover the \$100.00 filing fee paid to make the Application. Further, I find it appropriate in the circumstances to order that the Landlord is entitled to retain the security deposit held in partial satisfaction of the claim.

Pursuant to section 67 of the Act, I find the Landlord is entitled to a monetary order in the amount of \$3,850.00, which has been calculated as follows:

<b>Claim</b>	<b>Amount</b>
Unpaid rent:	\$4,500.00
Filing fee:	\$100.00
<i>LESS security deposit:</i>	<i>-( \$750.00 )</i>
<b>TOTAL:</b>	<b>\$3,850.00</b>

### Conclusion

The Tenant is conclusively presumed to have accepted the end of her tenancy in relation to the One Month Notice for Cause. The Landlord is granted an order of possession, which will be effective two (2) days after service on the Tenant. If the Tenant fails to comply with the order of possession it may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Tenant has breach the Act by not paying rent when due to the Landlord. The Landlord is granted a monetary order in the amount of \$3,850.00. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: May 03, 2019

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Residential Tenancy Branch