



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNR, OPR, MNRL, FFL

### Introduction

This hearing involved cross applications made by the parties. On June 10, 2019, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) pursuant to Section 46 of the *Residential Tenancy Act* (the “Act”).

On June 14, 2019, the Landlord made an Application for Dispute Resolution seeking an Order of Possession for unpaid rent pursuant to Section 46 of the *Act*, seeking a Monetary Order for unpaid rent pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

J.S. attended the hearing as an advocate for the Tenant; however, there was no written authorization from the Tenant for her to represent the Tenant during this hearing. She stated that she is the Tenant’s sister-in-law and that the Tenant could not attend because she was at a funeral. She advised that she would not be able to contact the Tenant to ask her to call in and provide authorization. She stated that she was provided with the Tenant’s Application, that she had it in front of her, and that she was familiar with the nature of the Tenant’s dispute. As J.S. had the information to participate in the hearing and was familiar with the nature of the Tenant’s dispute, I am satisfied that J.S. had been designated as the representative of the Tenant and that the hearing could proceed.

R.W. and Y.W. attended the hearing as agents for the Landlord. All in attendance provided a solemn affirmation.

J.S. advised that the Landlord was served the Notice of Hearing and evidence package by registered mail on June 14, 2019 and R.W. confirmed that the Landlord received the Notice of Hearing and evidence package. Based on this undisputed testimony, I am

satisfied that the Landlord was served with the Notice of Hearing and evidence package. Consequently, the Tenant's evidence will be accepted and considered when rendering this decision.

R.W. advised that the Tenant was served the Notice of Hearing and evidence package by registered mail (the registered mail tracking history is on the first page of this decision) on July 8, 2019, but J.S. stated that she did not receive this. However, on the registered mail tracking history, it was apparent that the Tenant simply refused to accept this package. As the Notice of Hearing package was not served to the Tenant within three days as per Rule 3.1. of the Rules of Procedure, I have dismissed the Landlord's Application with leave to reapply. However, as the Landlord's evidence was served in accordance with the timeframe requirements of Rule 3.14 of the Rules of Procedure, I am satisfied that the Tenant was deemed to have received the Landlord's evidence. Consequently, the Landlord's evidence will be accepted and considered when rendering this decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an order of possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

#### Issue(s) to be Decided

- Is the Tenant entitled to have the Notice cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?

#### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on May 16, 2019 and that rent was established at \$3,500.00 per month, due on the fifteenth day of each month. A security deposit of \$1,750.00 was also paid.

R.W. advised that the Notice was served by posting it to the Tenant's door on June 4, 2019 and the Landlord submitted a proof of service confirming this. She advised that the Notice indicated that \$5,250.00 was outstanding on May 15, 2019. She stated that the Tenant paid rent in the amount of \$3,500.00 and a security deposit in the amount of \$1,750.00, by separate cheques, on May 15, 2019. However, these cheques subsequently bounced, and she submitted a bank transaction document as documentary evidence to corroborate these insufficient funds cheques. She stated that she was not aware that she could not include the amount of the security deposit as unpaid rent in the Notice. As well, she advised that the Tenant has not paid rent for the months of June or July 2019 either. The Notice also indicated that the effective end date of the tenancy was June 13, 2019.

J.S. stated that she does not have the Landlord's evidence in front of her and therefore, is not able to see the Notice. She was reminded that despite the Tenant refusing the Landlord's registered mail package for evidence, this evidence has been deemed received and it is to her detriment as the advocate, and to the detriment of the Tenant, that the Tenant refused this package. However, as per the Tenant's Application, J.S. advised that she was aware that the Tenant received the Notice on June 4, 2019 by being posted on the door and she did not dispute this.

The only information that J.S. relied on was a receipt that was submitted as documentary evidence confirming that rent in the amount of \$3,500.00 and a security deposit in the amount of \$1,750.00, by separate cheques, were received by the Landlord on May 16, 2019. However, she could not speak to the Landlord's evidence of the cheques bouncing, nor did she have any information with respect to whether the Tenant paid any rent after getting the Notice or if the Tenant simply disputed the Notice.

Furthermore, while it was her belief that the Tenant paid rent for June and July 2019, the only evidence she relied on to support this was what "the Tenant told her". Moreover, she could not answer how the Tenant allegedly paid the rent for these months, but she "assumed" it was paid by cheque and was paid in person to the Landlord as this is how the rent was paid initially at the start of the tenancy.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

I have reviewed the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. I am satisfied that the Notice meets all of the requirements of Section 52.

Section 26 of the *Act* states that rent must be paid by the Tenant when due according to the tenancy agreement, whether or not the Landlord complies with the tenancy agreement or the *Act*, unless the Tenant has a right to deduct all or a portion of the rent.

Should the Tenant not pay the rent when it is due, Section 46 of the *Act* allows the Landlord to serve a 10 Day Notice to End Tenancy for Unpaid rent. Once this Notice is received, the Tenant would have five days to pay the rent in full or to dispute the Notice. If the Tenant does not do either, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenant must vacate the rental unit.

The undisputed evidence before me is that the Tenant received the Notice on June 4, 2019. According to Section 46(4) of the *Act*, the Tenant has 5 days to pay the overdue rent or to dispute this Notice. Section 46(5) of the *Act* states that *"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 is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date."*

As the fifth day fell on Sunday June 9, 2019, the Tenant must have paid the rent in full by this day or disputed the Notice by Monday June 10, 2019 at the latest. The undisputed evidence is that the Tenant made this Application on June 10, 2019.

Based on the evidence before me, the consistent and undisputed evidence is that rent was received by cheque prior to the tenancy starting. However, I have the Landlord's testimony and evidence that these cheques bounced after the Tenant issued them. I

have no evidence before me from the Tenant that this initial rent cheque did not bounce. Furthermore, J.S. could not answer any questions with respect to rent owed or paid and simply stated that all she had before her was what was provided to her by the Tenant.

As J.S. was not able to sufficiently answer any questions with respect to rent payments made or not made, I find that the Landlord's evidence carries more weight than J.S.'s unsupported assumptions and speculative answers about the Tenant's situation. On a balance of probabilities, I am satisfied that the Tenant's rent cheque issued before the tenancy started more likely than not bounced and that the Tenant did not pay the rent in full when it was due, nor was it paid within five days of the Tenant receiving the Notice on June 4, 2019. Moreover, there is no evidence before me that the Tenant had a valid reason for withholding the rent pursuant to the *Act*.

As the Landlord's Notice is valid, as I am satisfied that the Notice was served in accordance with Section 88 of the *Act*, and as the Tenant has not complied with the *Act*, I uphold the Notice and find that the Landlord is entitled to an Order of Possession pursuant to Sections 52 and 55 of the *Act*.

As the Landlord's Application was dismissed with leave to reapply and they were unsuccessful in their application, I find that the Landlord is not entitled to recover the \$100.00 filing fee paid for their Application.

### Conclusion

I dismiss the Tenant's Application and 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.

The Landlord's Application with respect to monetary compensation is dismissed with leave to reapply.

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: July 30, 2019