



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Metro Vancouver Housing Corporation  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      Landlord: OPR MNR MNSD FF  
Tenant: CNR MT MNDC OLC

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on August 8, 2019.

The Landlord and the Tenant were both present at the hearing.

The Tenant stated that she did not serve the Landlord with her application/Notice of Hearing, and only sent the Landlord her evidence (in response to the Landlord's application) by registered mail. The Landlord acknowledged receiving the Tenant's evidence on July 26, 2019. As discussed during the hearing, since the Tenant filed her own cross application, she was required to serve the Landlord with her application/Notice of Hearing, as well as her evidence. Since she failed to serve her Notice of Hearing (application), I dismiss her claim, in full, with leave, except her application to cancel the 10 Day Notice, which is dismissed without leave. The Landlord's entitlement to an order of possession, pursuant to section 46 and 55 of the Act will be addressed further below.

The Tenant acknowledged receiving the Landlord's evidence and Notice of Hearing on June 24, 2019.

The Landlord uploaded a piece of evidence a day before the hearing to show that the Tenant has not paid August 2019 rent. However, as discussed during the hearing, this evidence is late, and will not be considered. The rules of procedure state that the applicant must serve the respondent no later than 14 days prior to the hearing. The Tenant stated she has paid August rent, but she was unable to provide any documentary evidence to support this. The Tenant stated she did not have adequate time to prepare a response to the Landlord's request for August 2019 rent as it was

added on at the last minute. I dismiss this portion of the Landlord's claim, with leave to reapply. The Landlord is at liberty to apply for compensation for August rent, if it remains unpaid.

All parties provided testimony and were provided the 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 submitted in accordance with the rules of procedure, and evidence that is relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

1. Is the landlord entitled to an order of possession for unpaid rent or utilities?
2. Is the landlord entitled to a monetary order for unpaid rent or utilities?

### Background and Evidence

Both parties agree that:

- monthly rent was set at \$1,385.00 and was due on the first of the month.
- the Landlord holds a security deposit of \$575.00 and a pet deposit of \$666.00.

The Landlord stated that she served the 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) on June 4, 2019, by posting it to the Tenant's door. The Landlord stated that she did not bring a witness and did not have any further evidence demonstrating that she posted the Notice to the Tenant's door. The Tenant stated she never got the Notice that was posted to her door. The Tenant stated that she did not know about the Notice until she found it buried within the Landlord's evidence for this hearing when she received that package on June 24, 2019. The Notice indicated that \$1,267.54 was outstanding at the time. The Tenant stated that she promptly paid rent, in full.

Both parties agree that since the Landlord issued the Notice, the Tenant paid rent in full, for June and July of 2019 on July 2, 2019, which is the first business day after the long weekend. The Landlord stated that August rent is now outstanding, but her documentary evidence was submitted late to support this. The Tenant denies that August rent is unpaid.

### Analysis

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent. When a tenant does not pay rent when due, section 46 of the *Act* permits a landlord to end the tenancy by issuing a notice to end tenancy. A tenant who receives a notice to end tenancy under this section has five days after receipt to either pay rent in full or dispute the notice by filing an application for dispute resolution.

I note that the Tenant stated she did not get the Notice that was posted on her door. The Landlord was unable to provide any further evidence to demonstrate that she posted the Notice to the Tenant's door, as she has claimed.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In this case, the burden of proof rests on the Landlord to show she sufficiently served the Notice to End Tenancy to the Tenant, prior to making an application based on that Notice.

In this case, I find there is insufficient evidence that the Landlord has sufficiently served the Tenant with the Notice. Further, although the Notice was contained somewhere within the paperwork the Landlord gave to the Tenant for this hearing, I find this is not sufficient. I find the Landlord must serve the Tenant with the Notice in a clear and verifiable/trackable way, and not mixed in with a variety of other documents (application, evidence, fact sheets). I dismiss the Landlord's application for an order of possession, in full. The tenancy will continue until it is ended in accordance with the *Act*. The Landlord remains at liberty to re-issue a new 10 Day Notice, should any rent be unpaid from August of 2019 forward. The Notice issued in June of 2019 is cancelled and set aside.

I note the parties agree that rent was paid up until the end of July 2019, and the Tenant paid June and July 2019 rent on July 2, 2019. It appears the parties are currently in disagreement about whether or not August 2019 rent is paid. However, as stated above, the Landlord's evidence on this matter was submitted late, and I decline to amend the Landlord's application to include August 2019 rent. The Landlord is granted leave to reapply for August 2019 rent, should it remain unpaid, although I encourage both parties to resolve the matter on their own and to check to ensure there were no banking errors prior to submitting a new application.

Since the Landlord was not successful with this application, I decline to award the recovery of the filing fee. The Landlord is encouraged to utilize verifiable methods of

service for Notices to End Tenancy, and to ensure evidence is served in accordance with the rules of procedure.

Conclusion

The Tenant's application to cancel the 10 Day Notice is dismissed without leave. The remainder of the Tenant's application is dismissed, with leave.

The Landlord's application for an order of possession is dismissed, without leave, and the Landlord's application for unpaid August 2019 rent, is dismissed, with leave.

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: August 08, 2019

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Residential Tenancy Branch