



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, OPR, MNR, MDSD & FF

The Application for Dispute Resolution filed by the Tenants seeks an order to cancel the 10 day Notice to End Tenancy dated June 12, 2019

The second Application for Dispute Resolution filed by the Tenants makes the following claims:

- a. An order to cancel the 10 day Notice to End Tenancy dated July 4, 2019
- b. An order to cancel the one month Notice to End Tenancy dated July 4, 2019
- c. A repair order

The Application for Dispute Resolution filed by the landlord makes the following claims:

- a. An Order of Possession for non-payment of rent
- b. An Order of Possession for cause
- c. A monetary order in the sum of \$4949 for unpaid rent and damages
- d. An order to retain the security deposit
- e. An order to recover the cost of the filing fee

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The parties acknowledged they had received the documents of the other party.

I find that the 10 day Notice to End Tenancy dated June 12, 2019 was served on the Tenants by posting on June 12, 2019. I find that the 10 day Notice to End Tenancy dated July 4, 2019 and the one month Notice to End Tenancy dated July 4, 2019 was

served on the Tenants by mailing, by registered mail to where the Tenants reside on July 7, 2019.

I find that the Application for Dispute Resolution and Notice of Dispute Resolution Hearing was filed by the Tenant(s) on June 20, 2019 was served on the landlords as the landlord acknowledged they had received it. I find that the Application for Dispute Resolution and Notice of Dispute Resolution Hearing filed by the Tenants on July 9, 2019 was served on the landlords on July 20, 2019. I find that the Application for Dispute Resolution and Notice of Dispute Resolution Hearing filed by the landlord was served on the Tenants on by mailing, by registered mail to where the Tenant(s) reside on July 26, 2019. It is deemed received 5 days after mailing.

Preliminary Matter:

The landlord seeks an order to have the tenant's second application to be heard along with the landlord's application. The tenant's second application is set for hearing on September 10, 2019. The tenant opposes the request. The tenant testified she never received a copy of the landlord's Application for Dispute Resolution and is unaware of the claims the landlord is making. She further testified she is out of town (leaving on July 26 2019 and is scheduled to return on August 21, 2019. The tenant stated she has evidence she intended to file that has not yet been filed as she thought she had plenty of time as the hearing was not until September 10, 2019. The tenant testified that she e-transferred the rent for June on June 14, 2019, e-transferred the rent for July on July 2, 2019 and e-transferred \$950 of the rent for August 2019.

The landlord called Witness #1 (another tenant who lives in the rental property) who testified the tenant was in contact with her and the tenant asked that she look at her mail. Witness #1 advised the tenant that she had a registered mail package. The tenant asked that she open the package and send her a picture of the first package. At the tenant's request the Witness opened the registered mail package and sent the picture. The tenant told the Witness she intended to contest this.

Credibility:

The credibility of both parties has been brought into question. The landlord testified the tenant failed to pay the rent for June. However, part way through the hearing the agent for the landlord pointed out that the banking documents provided by the landlord indicates they received an e-transfer of the rent for June on June 20, 2019. The veracity of the tenant evidence with respect to service of the landlord's Application for Dispute Resolution and the e-transfers of the rent for July and August has been brought

into question. The banking documents supplied by the landlord indicate the landlord did not receive any e-transfers from the tenant for July and August 2019.

Given the issues with respect to credibility I made the following order:

- The tenant was given until 5:00 p.m. on August 14, 2019 to upload evidence of payment to the RTB website reserved for these files and provide that evidence to the landlord.
- The landlord was given until 5:00 p.m. on August 15, 2019 to respond to this evidence if provided and to give copies of their response to the Tenant.
- I would determine at that stage whether it was necessary to hear the oral testimony of the parties.

The tenant testified she intended to vacate by August 31, 2019.

On August 16, 2019 I searched each of RTB site reserved for the respective files. The search disclosed that tenant failed to upload the e-transfer documents which she alleged would prove she paid the rent as she represented that she would do and any other evidence.

I determined that it was appropriate order that the tenant's application that was set for September 10, 2019 be heard at the same time as the landlord's application for the following reasons:

- The tenant's application to cancel the 10 day Notice to End Tenancy dated July 4, 2019 and the one month Notice to End Tenancy dated July 4, 2019 is related to the landlord's application for an Order of Possession which is based on these Notices.
- I accept the evidence of landlord's Witness 1 when she testified she opened the tenant's registered mail and advised the tenant of the date, time and nature of the landlord's claim at the end of July. I determined the tenant was not credible when she testified she was unaware of the landlord's application.
- The tenant failed to establish she would be prejudiced by hearing the application at the same time. She testified she had proof of payment in the form of e-transfers. She was given an opportunity to submit that evidence but failed to do so. The tenant testified that she intended to vacate at the end of August.
- I determined the tenant failed to provide sufficient proof of a satisfactory reason why the tenant's application set for September 10, 2019 should not be heard

along with the landlord's application. As a result I ordered that the tenant's application set for September 10, 2019 be heard with the landlord's set for August 13, 2019

Issue(s) to be Decided:

The issues to be decided are as follows:

- a. Whether the tenants are entitled to an order cancelling the 10 day Notice to End Tenancy dated June 12, 2019?
- b. Whether the Tenants are entitled to an order cancelling the 10 day Notice to End Tenancy dated July 4, 2019?
- c. Whether the Tenants are entitled to an order cancelling the one month Notice to End Tenancy dated July 4, 2019?
- d. Whether the landlord is entitled to an Order for Possession?
- e. Whether the landlord is entitled to A Monetary Order and if so how much?
- f. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- g. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence:

The parties entered into a written tenancy agreement that provided that the tenancy would start on April 1, 2019 and end on April 1, 2020. The rent is \$1550 per month payable on the first day of each month. The tenants paid a security deposit of \$775 at the start of the tenancy.

The tenant(s) failed to pay the rent for the months of July 2019 and August 2019 and the sum of \$3100 remains owing.

The tenant(s) continue to reside in the rental unit. .

Tenant's Application to Cancel the 10 day Notice to End Tenancy dated June 12, 2019

I granted the Tenant's application to cancel the 10 day Notice to End Tenancy dated June 12, 2019 for the following reasons:

The landlord served the 10 day Notice to End Tenancy by posting on June 12, 2019. It is deemed received 3 days later. The tenant testified the rent was paid in full on June 14, 2019. The agent for the landlord stated that the landlord's banking documents indicate it was accepted by the landlord on June 21, 2019. The landlord did not provide

sufficient evidence that the payment was accepted for “use and occupation only.” I determined the landlord reinstated the tenancy.

Tenant’s Application to Cancel the 10 day Notice to End Tenancy and the one month Notice to End Tenancy dated July 4, 2019.

For the reasons set out above I determined the Tenant’s Application set for September 10, 2019 should be heard on August 13, 2019 at the same time as the landlord’s application for an Order of Possession.

I determined that the tenant failed to prove that she paid the rent for July as alleged. The landlord’s banking documents do not indicate the e-transfer payment. The tenant was given an opportunity to submit evidence of the e-transfer but she failed to do so. I determined the tenant failed to pay the rent for July 2019 and the sum of \$1550 is owed for that month.

Further I determined the tenant failed to pay the rent for August 2019. She testified she withheld \$600 because the landlord failed to make necessary repairs and e-transferred the balance to the landlord. The tenant failed to provide this evidence.

As a result I dismissed the tenant’s application to cancel the 10 Notice to End Tenancy dated July 4, 2019. I order that the tenancy shall end.

I dismissed the Tenant’s application to cancel the one month Notice to End Tenancy which would have set the end of tenancy for August 31, 2019. One of the grounds in that Notice was that the Tenant is repeatedly late paying the rent. I determined the landlord has established that the tenant has paid the rent late on at least 3 occasions.

Order for Possession:

The Residential Tenancy Act provides that where an arbitrator has dismissed a tenant’s application to cancel a Notice to End Tenancy, the arbitrator must grant an Order for Possession. The landlord used the approved government form. As a result I granted the landlord an Order for Possession effective 5:00 p.m. on August 23, 2019. I determined it was appropriate to set this date in order to meet the needs of both parties for the orderly winding up on the tenancy. The tenant testified she was out of town and not returning until the evening of August 21, 2019. The landlord submitted they needed time to attempt to re-rent the rental unit for September 1, 2019.

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

I dismissed the Tenant's application for a repair order as the tenancy is coming to an end.

Landlord's Application - Order of Possession:

For the reasons set out above I determined the landlord was entitled to an Order for Possession. There is outstanding rent. The Tenant(s) application to cancel the 10 day Notice to End Tenancy was dismissed. The landlord used the approved government form.

Analysis - Monetary Order and Cost of Filing fee:

I determined the tenant has failed to pay the rent for the month(s) of July 2019 and August 2019 and the sum of \$3100 remains outstanding. I determined the landlord has given sufficient notice of their intention to claim for all of last month as provided in the Application for Dispute Resolution. I dismissed the landlord's claim for the cost of utilities with liberty to re-apply as I determined that claim was premature. I determined the landlord has established a claim against the tenant in the sum of \$3200 for unpaid rent and the cost of the filing fee.

Security Deposit:

I determined the security deposit plus interest totals the sum of \$775. I ordered the landlord may retain this sum thus reducing the amount outstanding under this monetary order to the sum of \$2425.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

Conclusion:

I granted the tenant's application for an order to cancel the 10 day Notice to End Tenancy dated June 12, 2019 as I determined the tenancy had been reinstated after the tenant paid the rent for June in full. I ordered that the Tenant's application to cancel a

one month Notice to End Tenancy and a 10 day Notice to End Tenancy which was originally scheduled for September 10, 2019 be heard with the landlord's application. I dismissed the Tenant's application to cancel these two Notices to End Tenancy and a repair order without leave to re-apply. I granted an Order of Possession effective August 23, 2019 at 5:00 p.m. I determined the landlord has established a claim against the Tenants in the sum of \$3200. I ordered that the landlord shall retain the security deposit of \$775. In addition I ordered that the Tenants pay to the Landlord the sum of \$2425. I dismissed the landlord claim for the cost of utilities with leave to re-apply.

**This decision is final and binding on the parties.**

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 16, 2019

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Residential Tenancy Branch