



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: CNR, MT, FFL, OPRM-DR

### **Introduction**

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order for more time to make this application.
- b. An order to cancel a 10 day Notice to End Tenancy dated September 10, 2019

The Application for Dispute Resolution filed by the landlord seeks the following:

- a. An Order for Possession for non-payment of rent
- b. A Monetary Order in the sum of \$3600 for non-payment of rent.
- c. An Order to retain the security deposit.
- d. 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.

I find that the 10 day Notice to End Tenancy was served on the Tenants by posting on September 11, 2019. I find that the Application for Dispute Resolution and Notice of Dispute Resolution Hearing filed by the Tenant(s) was served on the landlord by mailing, by registered mail to where the landlord resides on September 18, 2019. Further I find that the Application for Dispute Resolution and Notice of Dispute Resolution Hearing filed by the landlord was served on the Tenants by mailing, by registered mail to where they reside on September 27, 2019.

### **Issue(s) to be Decided**

The issues to be decided are as follows:

- a. Whether the Tenant is entitled to an order for more time to make this application?

- b. Whether the tenant is entitled to an order cancelling the 10 day Notice to End Tenancy dated September 10, 2019
- c. Whether the landlord is entitled to an Order for Possession?
- d. Whether the landlord is entitled to A Monetary Order and if so how much?
- e. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- f. 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 August 22, 2019 and continue on a month to month basis. The tenancy agreement provides that the rent is \$3200 per month payable in advance on the 22<sup>nd</sup> ay of each month. However, the parties orally agreed that the tenant would pay rent for the period August 22, 2019 to August 31, 2019 in the sum of \$929 and would pay monthly rent for the balance of the tenancy on the first of each month. The tenant paid a security deposit of \$1600 on August 5, 2019. The tenancy agreement states the tenant was supposed to pay a pet damage deposit but they have not yet paid it.

The tenant testified that she was seriously ill and in hospital and was not able to respond. The tenants' rent cheques were return NSF. The tenant testified her husband has taken all of their money from their bank account and left her for another woman. The tenants have not paid any rent and the following amounts are due and owing: \$929 for the balance of August, 2019, \$3200 for September 2019, \$3200 for October 2019 and \$3200 for November 2019. The total sum in outstanding rent is \$10,529.

The tenant continues to reside in the rental unit.

Tenant's Application:

After carefully considering all of the evidence I dismissed the tenant's application to cancel the 10 Notice to End Tenancy. The tenant(s) failed to pay the rent and the sum of \$10.529 remains outstanding. The landlord used the approved government form. There is no basis for an order to cancel the 10 day Notice to End Tenancy. As a result I dismissed the Tenant's application.

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. As a result I granted the landlord an Order for Possession effective November 30, 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.

Landlord's Application - Order of Possession:

For the reasons set out above I granted an Order of Possession.

Analysis - Monetary Order and Cost of Filing fee

Rule 4.2 of the Rules of Procedure provides as follows:

4.2 Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

I ordered that the landlord's application be amended to include a claim for non payment of rent for September 2019, October 2019 and November 2019.

I determined the tenant has failed to pay the rent for the month(s) of August 2019 (\$929 is owed), September 2019 (\$3200), October 2019 (\$3200 is owed and November (\$3200 is owed) and the total sum in outstanding rent is \$10,529.

I granted the landlord a monetary order in the sum of \$10,529 plus the sum of \$100 in respect of the filing fee for a total of \$10,629.

Security Deposit

I determined the security deposit totals the sum of \$1600. I ordered the landlord may retain this sum thus reducing the amount outstanding under this monetary order to the sum of \$9029.

Conclusion:

I dismissed the Tenant(s) application to cancel the 10 day Notice to End Tenancy and granted an Order of Possession effective November 30, 2019. I ordered that the landlord shall retain the security deposit of \$1600. I further ordered that the Tenant(s) shall pay to the landlord the sum of \$9,029.

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.

**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: November 19, 2019

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Residential Tenancy Branch