



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

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

## **DECISION**

### Dispute Codes

Landlord: OPR-DR FFL

Tenant: CNR MT LRE PSF RP FFT

### Introduction

This hearing dealt with applications from both the tenant and the landlord pursuant to the *Residential Tenancy Act* (the *Act*).

The landlord applied for:

- an Order of Possession for Unpaid Rent, pursuant to sections 46 and 55 of the *Act*; and
- recovery of the filing fee for this application from the tenant pursuant to section 72 of the *Act*.

The tenant applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (10 Day Notice) pursuant to section 46 of the *Act*;
- more time to apply to cancel a notice pursuant to section 66 of the *Act*;
- an Order that the landlord's right to enter be suspended or restricted, pursuant to section 70 of the *Act*;
- an Order for the landlord to provide services or facilities required by the tenancy agreement or legislation;
- an Order for the landlord to perform regular repairs pursuant to section 62 of the *Act*; and
- recovery of the filing fee for this application from the landlord pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, and to make submissions. Landlord's agent K.D. attended on behalf of the landlord.

As both parties were present, service of documents was confirmed. The landlord's agent testified that they served the tenant with the Notice of Dispute Resolution Proceeding package for the landlord's Application by Canada Post registered mail on November 7, 2019 and provided a registered mail tracking number (noted on the cover sheet of this Decision) as proof of service. The landlord's agent testified that she served the tenant with the evidence for the landlord's Application by leaving it in the tenant's mailbox on December 2, 2019.

The tenant disputed receipt of the landlord's Notice of Dispute and evidence.

Section 89 of the *Act* permits service of the Notice of Dispute Resolution Proceeding package by Canada Post registered mail.

Section 90 of the *Act* sets out when documents that are not personally served are considered to have been received. Unless there is evidence to the contrary, a document is considered or 'deemed' received on the fifth day after mailing it is served by mail (ordinary or registered mail).

Residential Policy Guideline 12. Service Provisions provides guidance on determining deemed receipt, as follows:

*Where a document is served by Registered Mail, the refusal of the party to accept or pick up the Registered Mail, does not override the deeming provision. Where the Registered Mail is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing.*

Therefore, I find that the tenant was served with the landlord's Notice of Dispute for this hearing on November 12, 2019, the fifth day after mailing, in accordance with sections 89 and 90 of the *Act*.

Section 88 of the *Act* permits service of documents, such as evidence, by leaving a copy in the mailbox for the address where the person being served resides. In accordance with section 90 of the *Act*, documents left in the mailbox are considered served on the third day after leaving it. Therefore, I find that the tenant was served with the landlord's evidence on December 5<sup>th</sup>, 2019.

The landlord's agent confirmed receipt of the tenant's Notice of Dispute Resolution Proceeding package and evidence.

Based on the provisions of sections 88, 89 and 90 of the *Act*, and the testimonies of the parties, I find that both parties were sufficiently served for the purposes of this hearing in accordance with the *Act*.

Preliminary Issue – Severing of Unrelated Claims

The tenant's application included unrelated claims in addition to the tenant's application to dispute the landlord's 10 Day Notice and the tenant's request for more time to apply to dispute the 10 Day Notice.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure states that claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

I find that the tenant's primary application pertains to disputing a notice to end tenancy, therefore, I find that the additional claims are not related to whether or not the tenancy continues. Therefore, all of the tenant's claims except for her applications to dispute the landlord's 10 Day Notice and for more time to dispute the notice are dismissed, and I grant the tenant liberty to reapply for these claims subject to any applicable limits set out in the *Act*, should the tenancy continue.

#### Preliminary Issue – Tenant's Request for More Time to Apply for Dispute

The landlord's agent testified that the tenant was served with the 10 Day Notice on October 4, 2019 by posting the notice to the tenant's rental unit door. The tenant testified that she had been out of town and found the landlord's 10 Day Notice posted on her door on October 14, 2019. The tenant filed an Application for Dispute Resolution on October 29, 2019 to cancel the notice.

Section 46 of the *Act* provides that upon receipt of a 10 Day Notice to End Tenancy for Cause the tenant may, within 5 days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch.

In this case, the tenant filed the Application to dispute the notice and for an extension of time after the effective vacancy date of the notice, which was October 14, 2019.

Section 66(3) of the *Act* prohibits an arbitrator from extending the time limit for an applicant to make an application for dispute resolution "beyond the effective date of the notice".

Therefore, the tenant's request for more time to apply to cancel the notice to end tenancy is dismissed.

#### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession on the basis of the 10 Day Notice?  
Is the landlord entitled to recover the cost of the filing fee?

### Analysis

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute, and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing the parties discussed the issues between them, turned their minds to compromise and achieved a resolution of their dispute.

Both parties voluntarily agreed to the following final and binding settlement of the issues currently under dispute at this hearing:

1. Both parties agreed that this tenancy will end by no later than 3:00 p.m. on January 15, 2020, by which time the tenant and any other occupants will return vacant possession of the rental unit to the landlord.
2. The tenant agreed to make payment to the landlord of \$1,800.00 for December 2019 rent by no later than 4:30 p.m. on December 20, 2019.
3. The tenant agreed to make payment to the landlord of \$900.00 for one-half of the monthly rent for January 2020 by no later than 4:30 p.m. on January 2, 2020.
4. The tenant agreed to make payment to the landlord of \$900.00 for the pet damage deposit by no later than 4:30 p.m. on January 3, 2020.
5. Both parties agreed to maintain documentation of these payments to ensure there is a clear record that the terms of this agreement have been fulfilled.
6. Both parties agreed that the terms of this settlement as outlined above constitute a final and binding resolution of the landlord's application for dispute resolution filed on October 17, 2019 and the tenant's application for dispute resolution filed on October 29, 2019. As such the landlord's application is dismissed in its entirety, the tenant's application is dismissed in its entirety, and the landlord's 10 Day Notice to End Tenancy for Unpaid Rent dated October 4, 2018 is cancelled and of no further force or effect.

The parties are still bound by all of the rights, responsibilities, terms, conditions and any statutory compensation provisions of the tenancy agreement, the *Act*, and the associated regulations.

### Conclusion

To give effect to the settlement reached between the parties and as advised to both parties during the hearing, I issue the following Orders to the landlord:

- 1) I issue to the landlord an Order of Possession to be served on the tenant as soon as possible. The landlord may only enforce the Order if the tenant fails to vacate the rental unit **by 3:00 p.m. on January 15, 2020**. Should the tenant or anyone on the premises

fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

- 2) I issue to the landlord the attached Monetary Orders dated December 20, 2019, January 2, 2020 and January 3, 2020, to be served on the tenant by the landlord **only** if the tenant fails to make the agreed upon payments as required by the terms of this settlement agreement. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and be enforced as an Order of that Court. If the tenant only makes a partial payment and not the total amount, this partial payment must be accounted for if the landlord is enforcing the Monetary Order.

The landlord's 10 Day Notice to End Tenancy for Unpaid Rent dated October 4, 2019 is cancelled and is of no force or effect.

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: December 20, 2019

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Residential Tenancy Branch