



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CARIBOO TRAIL PARK  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR, OPRM-DR, FFL

### Introduction

This hearing dealt with cross applications filed by the parties. On November 7, 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 November 13, 2019, the Landlord applied for a Dispute Resolution proceeding seeking an Order of Possession based on the Notice pursuant to Section 46 of the *Act*, seeking a Monetary Order for the unpaid rent pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*. On November 20, 2019, this Application was set down for a participatory hearing to be heard as a cross application with the Tenant’s Application on February 20, 2020 at 11:00 AM.

Both the Tenant and the Landlord attended the hearing. All in attendance provided a solemn affirmation.

The Tenant advised that she served the Landlord with the Notice of Hearing and evidence package by hand to an employee in the office on November 17, 2019. The Landlord was confused and uncertain whether or not he received this package but then stated that he “wanted to get this over with” and acknowledged that he received it. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served the Notice of Hearing and evidence package.

The Landlord provided multiple, conflicting dates and methods for service of the Notice of Hearing package to the Tenant and he was not prepared for this hearing. The Tenant did confirm that she received this package. Based on this undisputed evidence, as the Tenant confirmed that she received this package, as she had attended the hearing, and as she understood the claims against her, I am satisfied that the Tenant was served the Notice of Hearing package.

The Landlord also provided multiple, conflicting dates and methods for service of the evidence package to the Tenant and he was not prepared for this hearing. The Tenant stated that she did not receive any evidence. As the Landlord's testimony was uncertain and wavering, I am not satisfied that the Landlord's evidence was served to the Tenant. As such, I have excluded all of the Landlord's evidence and will not consider it 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 Landlord's Notice cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order for unpaid rent?
- Is the Landlord entitled to recover the filing fee?

#### 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.

The Landlord advised that the tenancy started on January 1, 2019; however, the Tenant advised that the tenancy actually started on February 1, 2019. All parties agreed that the rent was owed in the amount of \$600.00 per month, due on the first day of each month and that a security deposit was not paid.

The Landlord also provided multiple, conflicting dates and methods for service of the Notice; however, the Tenant confirmed that she received the Notice on November 2, 2019 by hand. He stated that \$1,200.00 was outstanding on November 1, 2019 as the Tenant did not pay October or November 2019 rent in full. He also stated that the Tenant did not pay rent in full for December 2019, or January and February 2020. All parties did agree that the Tenant did make partial payments of rent of \$400.00 on November 22, 2019, \$200.00 on December 24, 2019, and \$400.00 on January 23, 2020. The effective date on the Notice was noted as November 11, 2019. He also advised that he served both pages of the Notice.

The Tenant advised that she had difficulties with payment of rent as there were issues with her federal and provincial pension plans. She confirmed that she did not pay October or November 2019 rent and the only rent payments were made to the Landlord as above. She alleged that she had a verbal agreement with the Landlord regarding a payment plan for rent; however, the Landlord denied that there was ever any agreement. She confirmed that she had no authority under the *Act* to withhold the rent. With respect to the second page of the Notice, while she stated that she did not get the second page, she advised that she understood the “meat and potatoes” of the Notice, and her position was that it was not prejudicial to her if she in fact was not served both pages.

### 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.

In considering this matter, I have reviewed the Landlord’s Notice to ensure that the Landlord has complied with the requirements as to the form and content of Section 52

of the *Act*. In reviewing this Notice, given that the Tenant acknowledged that if she was not served the second page of the Notice, she was prepared to proceed anyways, I am satisfied that the hearing could proceed and that the Notice meets all of the requirements of Section 52. Therefore, I find that it is a valid Notice.

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. The consistent evidence before me is that the Tenant was served the Notice in person on November 2, 2019. According to Section 46(4) of the *Act*, the Tenant has 5 days, after being served the Notice, 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 November 7, 2019, the Tenant must have paid the rent in full or made her Application to dispute the Notice on this date at the latest. The undisputed evidence is that the Tenant did not pay the rent in full and did not have a valid reason under the *Act* for withholding the rent.

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 46 and 55 of the *Act*.

I also find that the Landlord is entitled to a monetary award for October, November, and December 2019 rent, as well as January and February 2020 rent arrears. I grant the Landlord a monetary award in the amount of **\$2000.00**, which is comprised of rent owed for the months of October 2019 to February 2020, less the afore mentioned partial payments of rent.

As the Landlord was successful in this Application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this Application.

### Conclusion

The Landlord is provided with a formal copy of an Order of Possession effective **two days after service of this Order** on the Tenant. Should the Tenant or any occupant 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.

The Landlord is provided with a Monetary Order in the amount of **\$2,100.00** in the above terms, and the Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: February 20, 2020

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**Residential Tenancy Branch**