



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

Tenant: CNC – MT

Landlord: OPC OPR MNR FF

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on November 23, 2020.

The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the “Act”):

- more time to make an application to cancel the Landlord’s 1-Month Notice to End Tenancy (1-Month Notice); and,
- to cancel the 1-Month Notice.

The Landlord applied for the following relief:

- An order of possession based on the 10-Day Notice to End Tenancy for Unpaid Rent (10-Day Notice);
- An order of possession based on the 1-Month Notice;
- A monetary order for unpaid rent or utilities.

The Landlord was present at the hearing. The Tenant was also present at the hearing.

The Landlord stated that they served the Tenant with their Notice of Dispute Resolution proceeding on September 30, 2020. The Tenant acknowledged receipt this day. I find the Tenant was sufficiently served with this package on September 30, 2020. The Landlord also stated they served the Tenant with an amendment package on October 13, 2020, to include the 10 Day Notice and the claim for unpaid rent. The Tenant acknowledged receipt of the amendment package on that same day. I find the Tenant was sufficiently served with the Landlord’s amendment on October 13, 2020.

The Landlord served the Tenant, in person with a CD and a USB stick, on October 25, 2020. The Tenant acknowledged receiving the USB stick and CD on this date, but stated he was unable to open it because he did not have a computer. The Landlord stated he followed up with the Tenant and the Tenant confirmed he was unable to view the files because he did not have a computer. The Tenant stated he did not make any attempts to open or view the files, or to get assistance opening and viewing the evidence after telling the Landlord he did not have a computer.

I turn to the following Rule of Procedure:

### **3.10.5 Confirmation of access to digital evidence**

*The format of digital evidence must be accessible to all parties. For evidence submitted through the Online Application for Dispute Resolution, the system will only upload evidence in accepted formats or within the file size limit in accordance with Rule 3.0.2.*

*Before the hearing, a party providing digital evidence to the other party must confirm that the other party has playback equipment or is otherwise able to gain access to the evidence.*

*Before the hearing, a party providing digital evidence to the Residential Tenancy Branch directly or through a Service BC Office must confirm that the Residential Tenancy Branch has playback equipment or is otherwise able to gain access to the evidence. If a party or the Residential Tenancy Branch is unable to access the digital evidence, the arbitrator may determine that the digital evidence will not be considered.*

*If a party asks another party about their ability to gain access to a particular format, device or platform, the other party must reply as soon as possible, and in any event so that all parties have seven days (or two days for an expedited hearing under Rule 10), with full access to the evidence and the party submitting and serving digital evidence can meet the requirements for filing and service established in Rules 3.1, 3.2, 3.14 and 3.15.*

*Regardless of how evidence is accessed during a hearing, the party providing digital evidence must provide each respondent with a copy of the evidence on a memory stick, compact disk or DVD for its permanent files.*

In this case, I note the Landlord followed up with the Tenant to ensure he could access the files. It does not appear the Tenant took any steps to try and gain access to a computer, or find a way to access the files. I find it was incumbent on the Tenant to at least *attempt* to find a computer. I note the Tenant's mother was also at the hearing, and it does not appear the Tenant reached out to her in an attempt to view the files. I find the Tenant should have done more to attempt to gain access to the files, or explain why he was unable to attempt to find a solution. I find the Landlord did what was required (serve the USB stick, and follow up by asking if the Tenant could access), and I find his evidence is admissible for the purposes of this hearing.

The Tenant stated he served the Landlord with his Notice of Dispute Resolution proceeding on September 30, 2020. The Landlord confirmed receipt of the package on that same day. The Tenant did not submit any evidence of his own.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

The Landlord is requesting to amend their application to include rent that has accrued since the original application date (for November 2020). I turn to the following Rules of Procedure (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.

In consideration of this, I allow the Landlord to amend their application to include rent that has accrued since the original application date.

Issue(s) to be Decided

1. Is the Tenant allowed more time to make an application to cancel the 1-Month Notice?
2. Is the Tenant entitled to have the 1-Month Notice of the 10-Day Notice cancelled?
  - a. If not, is the Landlord entitled to an order of possession?
3. Is the Landlord entitled to a monetary order for unpaid rent or utilities?

### Background and Evidence

Both parties agree that monthly rent is set at \$1,200.00 and is due on the first of the month. The Landlords confirmed that they hold \$600.00 as a security deposit. However, they do not wish to claim against the deposit, as they wanted to hold the deposit in case there is damage to the unit.

The Tenant acknowledged receiving the 1-Month Notice on September 1, 2020, and filed to dispute it on September 23, 2020. The Tenant also applied for more time and stated that he has mental health challenges and was very “disorganized”. The Tenant stated he had to wait for his nurse to submit a letter to ask for more time. This letter was drafted on September 25, 2020, and was written by the Tenant’s nurse to ask for more time, due to his mental health challenges. A copy of the 1-Month Notice was provided into evidence and several grounds were selected.

The Tenant also acknowledged receiving a 10-Day Notice on October 13, 2020, which was issued for unpaid October rent in the amount of \$1,200.00. A copy of this Notice was provided into evidence. The Landlord stated that they served it to the Tenant this day, along with their amendment to include that Notice as part of this proceeding. The Tenant stated he did not dispute the 10-Day Notice. Rather he thought he had 10 days to pay all outstanding rent, so he paid rent on October 20, 2020, expecting the Notice to be set aside. The Tenant was unaware he only had 5 days to pay all outstanding rent. The Landlord acknowledged receiving the \$1,200.00 on October 20, 2020, but wants an order of possession, because the Tenant did not pay in time.

Both parties agree that rent has not yet been paid for November 2020.

### Analysis

I note the Tenant has applied for more time to make an application to cancel the 1-Month Notice, and he has also applied to cancel the 1-Month Notice itself. However, I first turn to the 10 Day Notice, and the Landlord’s request for a monetary order for unpaid rent.

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(1) 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, under section 46(4) of the *Act*, after receipt to either pay rent in full or dispute the notice by filing an application for dispute resolution. When a tenant does not pay rent in full or dispute the notice, the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice, as per section 46(5) of the *Act*.

In this case, I find that the tenant owed \$1,200.00 in past due rent at the time the Notice was issued on October 13, 2020. I find the Tenant received the Notice that same day, which is the day he noted receiving it.

The tenant had 5 days to pay rent in full or file an application for dispute resolution. Although the tenant made a payment on October 20, 2020, I note this was not within the allowable 5 day window. As such, I find the tenant is conclusively presumed to have accepted the end of the tenancy, on the effective date of the notice. The Landlord is entitled to an order of possession, which will be effective two (2) days after it is served on the tenant.

Next, I turn to the Landlord's request for a Monetary Order for unpaid rent. After considering the evidence before me, as summarized in the chart above, I find there is sufficient evidence before me to demonstrate that the tenant owes and has failed to pay \$1,200.00 in past due rent, which is the rent that remains unpaid for November 2020.

Further, section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Landlord was successful in this hearing, I also order the tenant to repay the \$100.00 fee they paid to make the application for dispute resolution. In summary, I find the Landlord is entitled to a monetary order in the amount of \$1,300.00.

Given my findings thus far, it is not necessary to consider the issues behind the 1-Month Notice.

### Conclusion

The landlord is granted an order of possession effective **two days after service** on the tenant. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

The landlord is granted a monetary order pursuant to Section 67 in the amount of **\$1,300.00**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: November 23, 2020

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Residential Tenancy Branch