



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding BURNABY HEIGHTS INVESTMENT  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes:** OPR, CNR, MNR, MNSD, OLC, FF

### **Introduction**

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for an order of possession and for a monetary order for unpaid rent and the filing fee. The landlord also applied to retain the security deposit in partial satisfaction of his monetary claim.

The tenant applied for an order to cancel the notice to end tenancy. The tenant also applied for the recovery of the filing fee and for an order directing the landlord to comply with the *Act*.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

While I have turned my mind to all the documentary evidence, including the testimony of the parties, only the relevant portions of the respective submissions and/or arguments are reproduced here.

The tenant acknowledged receipt of the 10 Day Notice, which was served to her on October 04, 2022, by posting the notice on the door. In accordance with section 88 of the *Act*, I find that the tenant was duly served with the 10 Day Notice.

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

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

## **Background and Evidence**

The parties agreed that this tenancy began on February 01, 2019, with a monthly rent of \$1,895.00, due on the first day of each month. The landlord further testified that he currently retains a security deposit in the amount of \$850.00.

The tenant provided a copy of the signed 10 Day Notice, dated October 04, 2022, with an effective date of October 14, 2022, identifying \$1,895.00 in outstanding rent owing for this tenancy.

The tenant testified that she paid rent twice for August 2022 and therefore did not pay rent that was due on October 01, 2022. The tenant provided a bank statement that shows a rent cheque was mishandled by the teller on August 01, 2022, and cleared on August 04, 2022. The tenant stated that she received a call from the landlord regarding a bounced cheque and she handed him a second cheque on August 08, 2022.

The bank statement shows that the cheque dated August 08 was declined for insufficient funds but the funds from the cheque dated August 01, 2022 were cleared. The landlord agreed that he had received rent for August 2022.

The tenant further added that she received a call from the landlord on August 18, 2022 asking the tenant to pay rent for August. The tenant stated that the landlord requested rent in cash, and she withdrew this amount and handed it over to the landlord. The tenant could not recall whether she received a receipt or whether she had received a receipt and misplaced it.

The landlord denied having requested rent in cash on August 18, 2022, and stated emphatically that he had never received rent in cash from the tenant since the start of tenancy. The landlord also stated that he had no reason to contact the tenant for rent for August as he had already received it.

The tenant continued to maintain that on August 18, 2022, she withdrew cash at the bank in the amount of \$1,805.00 which she handed over to the landlord. The tenant stated that she did not realize that one of the two rent cheques had cleared in early August 2022, and therefore borrowed money from a line of credit to pay the landlord on August 18, 2022.

The landlord agreed that he had received rent for the months following the notice to end tenancy and that other than rent for October 2022, the tenant was up to date on rent.

The landlord also agreed that he received rent for the months of November 2022 up to February 2023 by cheque and had not provided the tenant with receipts that informed the tenant that the rent was accepted only for the use and occupancy of the rental unit.

### **Analysis**

Section 46 of the *Act* allows a landlord to issue a 10 Day Notice to a tenant if the landlord has grounds to do so. Section 46 (4) of the *Act* provides that upon receipt of a 10 Day Notice the tenant may, within five days, pay the overdue rent, in which case the notice has no effect, or dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove the grounds for the 10 Day Notice. As the tenant disputed this notice on October 06, 2022, and since I have found that the 10 Day Notice was served to the tenant on October 04, 2022, I find that the tenant has applied to dispute the 10 Day Notice within the time frame provided by section 46 (4) of the *Act*.

Having reviewed the documentary evidence and affirmed testimony, I find that the tenant paid the monthly rent for all the months after October 2022. However, I find that the landlord accepted rent and did not indicate verbally or in writing that it was only accepted for the use and occupancy of the rental unit, until this hearing was conducted to resolve this dispute.

For the above reasons, as I have found that the landlord reinstated the tenancy when the tenant paid the rent on November 01, 2022, the 10 Day Notice dated October 04, 2022, is set aside and of no force or effect.

The landlord stated that he is still owed rent for October 2022 and is at liberty to serve another notice to end tenancy for unpaid rent. The notice to end tenancy dated October 04, 2022, is set aside solely based on the actions of the landlord when he failed to inform the tenant that rent was accepted for use and occupancy only. I make no finding on whether rent for October 2022 was paid or whether the tenant paid rent twice in August 2022.

I further find that the tenant has failed to provide any evidence that the landlord is not complying with the Act, Regulations, or tenancy agreement and for this reason the Application to have the landlord comply with the Act Regulations or tenancy agreement is dismissed, with leave to reapply.

Since the tenant is successful in her application to cancel the notice to end tenancy she is entitled to the recovery of the filing fee of \$100.00. The tenant may make a one-time deduction of \$100.00 from a future rent.

**Conclusion**

The 10 Day Notice dated October 04, 2022, is cancelled and of no force or effect. This tenancy will continue until ended in accordance with the *Act*.

The tenant may make a one-time deduction of \$100.00 from rent due on March 01, 2022.

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 23, 2023

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Residential Tenancy Branch