



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPM/OPR, MNR, FF, CNR, DRI

### Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- an order of possession pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- a determination regarding their dispute of an additional rent increase by the landlord pursuant to section 43;

Both parties attended the hearing via conference call and provided testimony, made submissions and presented evidence. Both parties confirmed the landlord served the tenant with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on March 8, 2019. Both parties also confirmed the tenant served the landlord with the notice of hearing package via Canada Post Regular Mail on March 7, 2019. Both parties confirmed the tenant served the landlord with the submitted late documentary evidence via email. The landlord confirmed receipt of the evidence 1 day prior to the scheduled hearing date. Neither party raised any service issues. I accept the undisputed evidence of both parties and find that although the tenant served her documentary evidence late that is no prejudice to the landlord. The landlord stated that she has reviewed the material and is able to proceed as the late

evidence are duplicates of the landlord's submissions. Both parties are deemed sufficiently served as per section 90 of the Act.

At the outset, the landlord's request was clarified in that she seeks:

- An order of possession as a result of a 10 Day Notice for Unpaid Rent
- An order of possession as a result of a mutual agreement to end tenancy
- A monetary claim for unpaid rent and recovery of the filing fee

The tenant's application was also clarified in that she did not receive a notice of an additional rent increase and as such has cancelled her request to cancel a notice of rent increase.

The hearing proceeded on the noted below based upon the clarifications above.

#### Issue(s) to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order for unpaid rent and recovery of the filing fee?

Is the tenant entitled to an order cancelling the 10 Day Notice?

#### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

This tenancy began on October 4, 2017 on a one year fixed term until October 4, 2018 as per the submitted signed copy dated September 20, 2017. The monthly rent was \$950.00 payable on the 4<sup>th</sup> day of each month. A \$500.00 security deposit was paid in 2016. An "Additional Agreement" signed and dated on September 16, 2018 was made on September 16, 2018 which states the tenancy shall end on March 4, 2019; the new agreement for rent shall be \$1,000.00 per month beginning October 4, 2018 to March 4, 2019; and the landlord shall cancel the notice to end tenancy.

The landlord repeatedly stated that multiple 10 Day Notice(s) were issued to the tenant, but was unable to direct me to a particular 10 Day Notice as per the application for an order of possession based upon a 10 Day Notice. The landlord provided through the assistance of her translator the following reasons:

10 Day Notice dated in September 2018

10 Day Notice dated March 1, 2019

The landlord's safety concerns over the actions of the tenant

The tenant also sought the cancellation of a 10 Day Notice dated February 27, 2018 with an effective end of tenancy date of March 4, 2019. Both parties agreed that this notice was not completed properly by the landlord as it does not provide for any details of unpaid rent or when it was due. I also note that it does provide for an address the same as the landlord. No explanation was provided by either party on the same address.

The landlord also seeks an order of possession as a result of a mutual agreement to end tenancy for March 4, 2019. The landlord provided a copy of a document "The Additional Agreement" signed and dated September 16, 2018. It states in part,

*Between the tenant, F.G.C. and the landlord, J.F. on sep 16, 2018 to resolve the "One Month Notice to End Tenancy for Cause" by Oct 04, 2018 from the Landlord. Both agree below:*

- 1) The tenant must move out on March 4, 2019.*
- 2) The new agreement for the rent will be \$1000.00 per month to start Oct 4 2018 to Mar 4 2019.*
- 3) The tenant will pay \$200 owned after the Landlord fix the roof and gutter.*
- 4) Cancel the notice by the Landlord.*

The tenant disputed this mutual agreement, confirming that she did sign it in agreement, but that she was "forced" to. The tenant when asked "how did the landlord for you?" provided testimony that prior to signing the agreement the landlord would post numerous notice(s) and that the tenant was undergoing personal medical issues. The tenant was asked on more than one occasion to describe in details how the landlord influenced her by "forcing" her acceptance in signing the agreement. The tenant was vague in her descriptions stating only that the tenant was undergoing many health problems and that she felt "forced" to sign in order to end the landlord's dispute. The tenant also stated that she wished to dispute #2 of the agreement in which a new rental rate of \$1,000.00 per month was made. The tenant could not explain why she wished to cancel items #1 and #2 and leave items #3 and #4 to be enforced.

### Analysis

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

In this case, both parties confirmed the landlord served a 10 Day Notice dated February 27, 2018 to the tenant on March 1, 2019 by posting it to the rental unit door.

Section 52 of the Act speaks to Form and Content in order for a landlord's notice to end tenancy to be effective. Both parties confirmed that the landlord served a 10 Day Notice for Unpaid Rent dated February 27, 2018. The landlord confirmed that this was an error as was to be dated February 27, 2019. Both parties confirmed that the landlord failed to complete the details of the notice by providing the details of unpaid rent as per the notice and when it was due. The tenant applied for dispute of the notice not knowing how much was owed. On this basis, I find that the 10 Day Notice dated February 27, 2018 (which was supposed to be February 27, 2019) is cancelled and is considered ineffective as the tenant was unable to properly respond to the landlord's notice as no details of unpaid rent were provided. The tenant's application to cancel the 10 Day Notice is granted.

As for the landlord's monetary claim, I find that insufficient details have been provided to establish a claim based upon the 10 Day Notice. The landlord's monetary claim is dismissed with leave to reapply. Leave to reapply is not an extension of any applicable limitation period.

Section 44 of the Act states in part that the landlord and the tenant may agree in writing to end the tenancy. In this case, both parties confirmed that a document "The Additional Agreement" signed and dated September 16, 2018 by both parties, states in part, that the tenant shall move out and end the tenancy on March 4, 2019.

The tenant has argued that she was "forced" to sign and agree to these terms, yet only wishes to cancel items #1 and #2, yet allow items #3 and #4. In providing details of how she was "forced", the tenant stated that she was undergoing personal medical problems. The tenant stated that she "chose" to sign the agreement to have the landlord stop the disputes/arguments with the landlord. On this basis, I find that the tenant has failed to provide sufficient evidence to satisfy me that she was "forced" to sign the agreement. Many, if not all of these details pre-date the September 18, 2018 signing of the document. I find that the tenant requires more than the assertion that she

was “forced” to show that she was under duress and somehow influenced by the landlord in signing the document. As such, I find that the mutual agreement to end tenancy dated September 18, 2018 to be valid. The landlord is entitled to an order of possession to be effective after 2 days upon the tenant being served as that date has now passed.

As the landlord has been partially successful in this application, I grant the landlord partial recovery of the filing fee for \$50.00.

### Conclusion

The landlord is granted an order of possession.  
The landlord is granted a monetary order for \$50.00.

These orders must be served upon the tenant. Should the tenant fail to comply with the orders, the orders may be filed in the Supreme Court and the Small Claims Division of the Provincial Court of British Columbia and enforced as orders of those courts.

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: April 23, 2019

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Residential Tenancy Branch