



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes      CNR, ERP, RP, RR, FF

### Introduction

This matter dealt with an application by the Tenants to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, for an Order that the Landlord make emergency repairs or general repairs, for a rent reduction and to recover the filing fee for this proceeding.

This oral hearing via teleconference started at 9:00 a.m. as scheduled, however by 9:10 a.m. the Tenants / Applicants had not dialled into the conference call and as a result, the hearing proceeded in the Tenants' absence.

The Landlord confirmed that the Tenants omitted her given name on their Application and as a result, the style of cause is amended to make that correction.

### Issue(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?
2. Are repairs required?
3. Are the Tenants entitled to a rent reduction?

### Background and Evidence

This tenancy started on November 1, 2010. Rent is \$1,000.00 per month payable in advance on the 1<sup>st</sup> day of each month plus utilities. The Landlord said the Tenants did not pay rent for December 2010 when it was due and as a result, she served the Tenants in person on December 19, 2010 with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The Landlord said the Tenants have not paid the rent for December 2010 or January 2011 or for any utilities for those months.

The Landlord also said that the Tenants caused a number of damages to the walls of the rental unit and in support of this assertion, she provided copies of photographs of the rental unit she said she took approximately 2 weeks ago with a police officer present.

## Analysis

The copy of the 10 Day Notice dated December 19, 2010 provided as evidence by the Landlord contains only the first page however the Landlord said she served the Tenants with both pages. In the absence of any evidence from the Tenants to the contrary, I find that they were served with both pages of the 10 Day Notice. However, the first page of the 10 Day Notice is missing the following information:

- when the rent of \$1,000.00 was due;
- the amount of utilities that were allegedly owing;
- the address of the rental unit; and
- the effective date of the Notice.

Section 52 of the Act says that in order to be effective, a notice to end tenancy must give the address of the rental unit and state the effective date of the Notice (among other things). However, s. 68 of the Act says that “if a notice to end tenancy does not comply with s. 52 of the Act, the director may amend the notice if satisfied that the person receiving the notice knew, or should have known, the information that was omitted from the Notice, and in the circumstances it is reasonable to amend the Notice.”

I find that the Landlord wrote in another section at the bottom of the Notice “end December 29, 2010.” Consequently, I find that the Tenants knew or should have known the effective date of the Notice although it was not written in the correct place on the form. I also find that the Tenants would have known the address of the rental unit which is where they reside. Given the Landlord’s evidence that it was a term of the tenancy agreement that rent was due on the 1<sup>st</sup> of each month, I further find that the Tenants would have known that they were issued a 10 Day Notice because they failed to pay rent due on the 1<sup>st</sup> of December 2010. For all of these reasons, I find that it would be reasonable to amend the 10 Day Notice to add the date when rent was due, the rental unit address and the effective date of the Notice. Consequently, I find that the 10 Day Notice dated December 19, 2010 is an effective and enforceable Notice.

The Landlord admitted that she wrote “power bill” on the Notice instead of the amount of utilities alleged to be owed because she had not received an invoice for the amount as of that time. In the circumstances, I find that the Tenants would not likely have known the amount of utilities owing and as a result, I cannot amend the 10 Day Notice in that regard. However, I find that this omission does not affect the enforceability of the Landlord’s 10 Day Notice as she only has to show that either rent or utilities or both were owed for December 2010 and were not paid.

Section 46(4) of the Act states that **within 5 days of receiving** a Notice to End Tenancy for Unpaid Rent or Utilities, a Tenant must either pay the overdue rent or apply for dispute resolution. If a Tenant fails to do either of these things, then under section 46(5) of the Act, they are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and they must vacate the rental unit at that time.

I find that the Tenants received the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated December 19, 2010 in person on December 19, 2010. Consequently, the Tenants would have had to pay the amount on the Notice or apply to dispute that amount no later than December 24, 2010.

However, I find that the Tenants did not pay the overdue rent and did not apply for dispute resolution to cancel the 10 Day Notice until December 31, 2010. Consequently, I find that the Tenants did not apply within the time limits required under s. 46(4) of the Act and their application to cancel the Notice is dismissed without leave to reapply for that reason. I also find that the Tenants' application would have failed even if they had filed their application within time limits required under the Act because they did not pay the rent owed.

The Landlord requested and I find pursuant to s. 55(1) of the Act that she is entitled to an Order of Possession to take effect 2 days after service of it on the Tenants. In the absence of any evidence to support the balance of the Tenants' application (ie. for emergency and general repairs, for a rent reduction and to recover the filing fee), it is also dismissed without leave to reapply.

### Conclusion

The Tenants' application is dismissed without leave to reapply. An Order of Possession effective 2 days after service of it on the Tenants has been issued to the Landlord. A copy of the Order must be served on the Tenants and may be enforced in the Supreme Court of British Columbia.

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: January 24, 2011.

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Residential Tenancy Branch