



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes MT, CNR, EPR

### Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for:

- more time to make an application to cancel the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 66;
- cancellation of the landlord's 10 Day Notice pursuant to section 46; and
- an order to the landlord to make emergency repairs to the rental unit pursuant to section 33.

The tenant AM provided evidence on behalf of the tenants. The landlord was represented by his advocate. The landlord's agent provided evidence on the landlord's behalf. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The landlord admitted service of the tenant's dispute resolution package. On the basis of this evidence, I am satisfied that the landlord was served with dispute resolution package pursuant to section 89 of the Act.

At the hearing the landlord's advocate made an oral request for an order of possession in the event I dismissed the tenants' application to cancel the 10 Day Notice.

### Issue(s) to be Decided

Are the tenants entitled to more time to make their application? Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an order of possession? Are the tenants entitled to an order that the landlord make repairs to the rental unit?

### 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 tenants' claim and my findings around it are set out below.

This tenancy began in June 2013. Monthly rent of \$1,400.00 was due on the first. The landlord collected a security deposit of \$700.00 and a pet damage deposit of \$350.00. These deposits were collected in June 2013.

The landlord's agent testified that on 26 October 2014 she served the tenant AM personally with the 10 Day Notice. The 10 Day Notice set out that the tenants failed to pay \$5,700.00 in rent. The effective date of the notice was 7 November 2014. The landlord's agent testified that she has not received any rent payments since she issued the 10 Day Notice. The tenants did not dispute this evidence.

Tenant testified that the electrical system needs work and that the basement is flooded. The tenant testified that he had not personally completed any emergency repairs. The landlord's agent testified that when she went to make repairs to the electrical system that she was unable to access the electrical panel or to inspect the basement. The landlord testified that the electrical problems were caused by the tenants overloading the electrical circuits with space heaters after the gas service to the rental unit was terminated by the gas company.

### Analysis

The landlord provided notice to the tenants to end the tenancy on the basis of section 46 of the Act. Pursuant to subsection 46(1) landlord may end a tenancy if rent is unpaid on any day after the day it is due.

Subsection 26(1) of the Act sets out:

A tenant must pay rent when it is due under the tenancy agreement....unless the tenant has a right under this Act to deduct all or a portion of the rent.

Section 33 of the Act allows tenants, in specific circumstances, to deduct amounts from rent that the tenants have paid in order to make emergency repairs to the rental unit. The tenants have not made any repairs. Accordingly, the tenants were not entitled to deduct any amount from rent.

Based on the undisputed evidence that the tenants' rent was past due 2 October 2014 and the tenants failed to pay the outstanding rent without any valid reason to do so, I find that the 10 Day Notice is valid and the tenants are not entitled to cancel the notice. Accordingly, I dismiss the tenants' application to cancel the 10 Day Notice.

Pursuant to section 55, where an arbitrator dismisses a tenant's application or upholds the landlord's notice and the landlord makes an oral request for an order of possession at the hearing, an arbitrator must grant the landlord an order for possession. As the tenants' application is dismissed and the landlord has made an oral request for an order of possession, I am obligated by the Act to grant the landlord an order of possession.

As this tenancy is ending, I decline to order the landlord to complete any repairs.

For these reasons, I dismiss the tenants' claim without leave to reapply.

### Conclusion

I dismiss the tenants' claim without leave to reapply.

I grant an order of possession to the landlord effective **two days after service of this order** on the tenant(s). Should the tenant(s) fail to comply with this order, this order may be filed and enforced as an order of the Supreme Court of British Columbia.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the *Residential Tenancy Act*.

Dated: December 12, 2014

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Residential Tenancy Branch

