



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute codes CNR

### Introduction

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

- cancellation of a 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 46

The hearing was conducted by conference call. All named parties attended the hearing.

### Issues

Should the landlord's 10 Day Notice to End Tenancy be cancelled? If not, is the landlord entitled to an order of possession?

### Background and Evidence

The tenancy began on December 5, 2015 with a monthly rent of \$350.00 payable on the 5<sup>th</sup> day of each month.

The tenant was served the 10 Day Notice to End Tenancy for Unpaid Rent in person on June 11, 2016. The Notice indicated the tenant failed to pay \$350.00 that was due on June 5, 2016.

The landlord testified that the tenant did not pay the full amount of the arrears indicated on the Notice within five days of being served and that the full amount is still outstanding. The tenant acknowledged rent was not paid within 5 days after receiving the notice due to alleged harassment and physical assault by the landlord. The tenant testified she wanted to pay and was planning to pay the rent but was afraid to pay as she was threatened by the landlord. The landlord denied the tenant's allegations.

The tenant's application to cancel the 10 Day Notice was filed on June 16, 2016 within the time period permitted under the Act.

### Analysis

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the Notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch.

Section 26 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Although the tenants filed an application for dispute resolution within the time limit permitted under the Act, I find the tenant's application must be dismissed as the tenant acknowledged rent was not paid within 5 days after receiving the notice nor did the tenant have a right under this Act to deduct all or a portion of the rent. There is no provision in the Act for a tenant to deduct or withhold rent due to alleged harassment or assault by a landlord. The obligation was on the tenant to pay the rent when it was due and if the tenant had concerns for her safety she could have arranged an alternative method of payment which would not require her to personally hand over the rent money to the landlord.

The tenant's application is dismissed without leave to reapply and the landlord is granted an Order of Possession pursuant to section 55 of the Act.

### Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: July 21, 2016

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Residential Tenancy Branch