



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNR   OLC   ERP   RP

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, received at the Residential Tenancy Branch on June 7, 2017 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "*Act*"):

- an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated June 2, 2017 (the "10 Day Notice");
- an order that the Landlord comply with the *Act*, regulation or a tenancy agreement;
- an order that the Landlord make emergency repairs for health or safety reasons; and
- an order that the Landlord make repairs to the unit, site, or property.

The Tenant attended the hearing on his own behalf, as did the Landlord. Both parties provided affirmed testimony.

No issues were raised about service of the Tenant's Application package or the Landlord's documentary evidence. Pursuant to section 71 of the *Act*, I find the parties were sufficiently served with the above documents for the purposes of the *Act*.

The parties were provided with the opportunity to present their evidence orally and in written and documentary form, and make submissions. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary and Procedural Matters

The Tenant sought an order cancelling the 10 Day Notice, and other relief. Rule of Procedure 2.3 permits an arbitrator to exercise discretion to dismiss unrelated claims with or without leave to reapply. The most important issue to address is whether or not the tenancy will continue. Accordingly, I find it appropriate to exercise my discretion to dismiss all but the Tenant's Application to cancel the 10 Day Notice. The Tenant is granted leave to reapply for the remainder of the relief sought at a later date, as appropriate.

### Background and Evidence

The Landlord testified that rent in the amount of \$650.00 per month is due on the first day of each month. However, the Tenant repeatedly paid less than the rent due. As of June 2, 2017, the Tenant was in arrears in the amount of \$890.00. Accordingly, the Landlord issued the 10 Day Notice, which was served on the Tenant, in person, on June 2, 2017. The Tenant's Application confirmed receipt on that date. A copy of the 10 Day Notice was submitted with the Tenant's documentary evidence. Further, the Landlord confirmed that no partial payments have been made since the 10 Day Notice was issued.

The Tenant's testimony in reply was inconsistent. The Tenant's Application confirmed that "I withheld my rent because there is no heat or hot water in the building". However, during the hearing, the Tenant testified that he tried to pay "some money" to the Landlord but that it was not accepted. Further, he initially testified that he tried to pay rent to the Landlord on July 7, 2017, but subsequently testified it was on June 7, 2017. The Tenant also posed the question as to why the Landlord did not issue receipts.

### Analysis

In light of the oral and documentary evidence submitted by the parties, and on a balance of probabilities, I find:

Section 26 of the *Act* confirms a tenant must pay rent when due, whether or not the landlord complies with the *Act*, the regulations or the tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the rent. Section 46 of the *Act* confirms a landlord may end a tenancy if rent remains unpaid on any day after the day it is due.

The Landlord testified that, as of June 2, 2017, rent in the amount of \$890.00 was outstanding, and that no partial payments have been received. The Tenant testified he tried to pay an unspecified amount of money to the Landlord. However, given the inconsistencies in the Tenant's evidence, I prefer the testimony provided by the Landlord. I find the Tenant has not paid rent when due. Accordingly, the Tenant's Application to cancel the 10 Day Notice is dismissed.

When a tenant's application to cancel a notice to end tenancy is dismissed and the notice complies with section 52 of the *Act*, section 55 of the *Act* requires that I grant an order of possession to a landlord. The Tenant submitted a copy of the 10 Day Notice into evidence. I find it complied with section 52 of the *Act*. Accordingly, I grant the Landlord an order of possession, which will be effective two (2) days after service on the Tenant.

### Conclusion

The Tenant's Application is dismissed. Pursuant to section 55 of the *Act*, the Landlord is granted an order of possession, which will be effective two (2) days after service on the Tenant. The order of possession may be filed in 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: August 11, 2017

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Residential Tenancy Branch