



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MT, CNR, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) filed by the Tenants under the *Residential Tenancy Act* (the “Act”), seeking both more time to make an application to cancel a Notice to End Tenancy and cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”), as well as the recovery of the filing fee.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application seeking to cancel a Notice to End Tenancy issued by a landlord, I must consider if the landlord is entitled to an Order of Possession if the Application is dismissed and the landlord has issued a Notice to End Tenancy that is compliant with Section 52 of the *Act*.

The hearing was convened by telephone conference call and was attended by the Landlord and the agent for the Landlord (the “Agent”). The Tenants did not attend. The Landlord and Agent attended the hearing at the scheduled time, ready to proceed, and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer only to the relevant facts and issues in this decision.

### Issue(s) to be Decided

Is there a valid reason to cancel the 10 Day Notice under the *Act*?

Are the Tenants’ entitled to recover the filing fee pursuant to section 72 of the *Act*?

If the Tenants are unsuccessful in seeking to cancel the 10 Day Notice, is the Landlord entitled to an Order of Possession pursuant to Section 55(1) of the *Act*?

### Background and Evidence

The Agent testified that the month-to-month tenancy began May 1, 2017, and that rent in the amount of \$1,300.00 is due on the first day of each month. The Agent testified that the Tenants only paid the first month's rent and that no further rent has been paid. As a result, the Agent stated that a 10 Day Notice was served.

The 10 Day Notice in the documentary evidence before me, dated August 22, 2017, has an effective vacancy date of September 1, 2017, and indicates that as of August 1, 2017, the Tenants owed \$3,900.00 in outstanding rent. The Agent stated that the 10 Day Notice was posted to the door of the Tenants' rental unit on August 22, 2017, and the Landlord submitted a witnessed and signed document indicating that the 10 Day Notice was served in the manner described above.

The Agent testified that the unit number listed on the 10 Day Notice is incorrect as the Tenants reside in the basement bachelor suite, not the "Main" suite. The Agent confirmed that the names of the Tenants and the remaining address information listed on the 10 Day Notice is correct and that the basement bachelor suite, not the main unit, is where the Tenants were served with the 10 Day Notice.

The Tenants applied for more time to make an application to cancel a Notice to End Tenancy and to cancel the 10 Day Notice; however, they did not appear at the hearing to provide any evidence or testimony.

### Analysis

Section 46 (1) of the *Act* outlines the grounds on which to issue a Notice to End Tenancy for non-payment of rent:

#### **Landlord's notice: non-payment of rent**

**46** (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

However, section 46(4) and 46(5) of the *Act* also state:

**46** (4) Within 5 days after receiving a notice under this section, the tenant may

(a) pay the overdue rent, in which case the notice has no effect, or

(b) dispute the notice by making an application for dispute resolution.

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by that date.

I have reviewed all relevant documentary evidence and oral testimony and in accordance with sections 88 and 90 of the *Act*, I find that the Tenants were deemed served with the 10 Day Notice on August 25, 2017, three days after it was attached to the door of their rental unit.

As the Tenants failed to attend the hearing to present any evidence or testimony in support of their Application, their Application is dismissed without leave to reapply. As a result, I decline to grant recovery of the filing fee.

Based on the above, I must now turn my mind to whether the 10 Day Notice issued by the Landlord complies with section 52 of the *Act*. Section 52 of the *Act* states the following:

**Form and content of notice to end tenancy**

**52** In order to be effective, a notice to end a tenancy must be in writing and must

(a) be signed and dated by the landlord or tenant giving the notice,

(b) give the address of the rental unit,

(c) state the effective date of the notice,

(d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy,

(d.1) for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied by a statement made in accordance with section 45.2 [*confirmation of eligibility*], and

(e) when given by a landlord, be in the approved form.

The 10 Day Notice in the documentary evidence before me is signed by the Landlord, dated, and contains an effective vacancy date. Although the 10 Day Notice contains a different unit address than the unit listed on the Application, the street address, street name, and the names of the Tenants are the same. The Agent testified that the Tenants actually reside in the basement bachelor suite, which is one of two basement suites in the house. On the Application the Tenants listed their unit as “#2 Basement”.

Section 68 of the *Act* states that if a Notice to End Tenancy does not comply with section 52, I may amend the Application if I am satisfied that the person receiving the Notice knew, or should have known, the information, and under the circumstances, it is reasonable to do so. The Tenants submitted an Application seeking to cancel the 10 Day Notice issued by the Landlord, even though the unit number listed on the 10 day Notice was different from the unit number they listed as their residence on the Application. As a result, I am satisfied that the tenants knew that the unit number listed on the 10 Day Notice was an error and should have been their unit number. As a result, I have amended the unit/Site# listed on the 10 Day Notice to “#2 Basement”.

Based on the above, I find that the 10 Day Notice served by the Landlord complies with Section 52 of the *Act*, and the Landlord is therefore entitled to an Order of Possession. As the corrected effective date of the 10 Day Notice, September 4, 2017, has passed, the Order of Possession will be effective two days after service.

Conclusion

The Tenants Application is dismissed and pursuant to section 55 of the *Act*, I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenants. The Landlord is provided with this Order in the above terms and the Tenants must be served with **this Order** as soon as possible. Should the Tenants fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

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: October 20, 2017

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Residential Tenancy Branch