



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute codes CNR CNL MNR MNDC FF

### 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 10 Day Notice);
- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) pursuant to section 49;
- a monetary order for the cost of emergency repairs to the rental unit pursuant to section 33;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony and present evidence. No issues were raised with respect to service of the application and evidence on file.

### Preliminary Issue – Scope of Application

*Residential Tenancy Branch Rules of Procedure*, Rule 2.3 states that, if, in the course of the dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may sever or dismiss the unrelated disputes contained in a single application with or without leave to apply.

Aside from the tenant's application to cancel the Notice(s) to End Tenancy, I am exercising my discretion to dismiss the remainder of the issues identified in the tenants' application with leave to reapply as these matters are not related. Leave to reapply is not an extension of any applicable time limit.

### Issues

Should the landlord's 10 Day Notice and 2 Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

Are the tenants entitled to recover the filing fee for this application?

### Background and Evidence

The tenancy began on October 1, 2017 with a monthly rent of \$1200.00 payable on the 1<sup>st</sup> day of each month.

The parties agreed that the tenants received the 10 Day Notice on April 4, 2018. The outstanding rent amount as per the 10 Day Notice was \$1200.00 which was due on April 1, 2018. The 10 Day Notice was incorrectly as March 3, 2018 and should have been April 3, 2018. As per section 68 of the Act, I find it is appropriate to amend the 10 Day Notice to correct this error. The 10 Day Notice is hereby amended to reflect the correct date of April 3, 2018.

The tenant's application to cancel the 10 Day Notice was filed on April 8, 2018 within the time period permitted under the Act.

The landlord testified that the tenant did not pay the full amount of the arrears indicated on the 10 Day Notice within five days of being served and that the full amount is still outstanding.

The tenant acknowledged the outstanding rent was not paid within 5 days after receiving the 10 Day Notice and argued that the rent was withheld in exchange for the work they put into the house at the start of the tenancy. The tenant alleges they had a verbal agreement with the landlord to do work on the house in exchange for reduced rent.

The landlord testified that they did not agree for the tenant to do work on the house in exchange for reduced rent. The landlord testified that the house was up for sale and they did not want to put more money into it.

### Analysis

Section 46 of the Act requires that upon receipt of a 10 Day Notice, the tenant must, within five days, either pay the full amount of the arrears indicated on the 10 Day Notice or dispute the 10 Day Notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch.

Section 55(1) of the *Act* states that if a tenant applies to dispute a landlord's notice to end tenancy and their Application for Dispute Resolution is dismissed or the notice is upheld the

landlord must be granted an order of possession if the notice complies with all the requirements of Section 52 of the *Act*.

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 tenant 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 10 Day Notice nor did the tenant have a right under this *Act* to deduct all or a portion of the rent. The tenant provided insufficient testimony that there was an agreement in place between the parties for the tenants to do work on the property in exchange for a reduced rent.

I find that the 10 Day Notice issued by the landlord complies with the requirements of Section 52 of the *Act*, accordingly, the landlord is granted an Order of Possession pursuant to section 55 of the *Act*.

As the tenancy has ended based on the 10 Day Notice, I find it not necessary to consider the merits of the 2 Month Notice.

The tenants are not entitled to recover the filing fee for this application.

### 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: June 13, 2018

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Residential Tenancy Branch