



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, ERP, LRE

### Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) filed by the Tenants under the *Residential Tenancy Act* (the “*Act*”), seeking cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”), an order for the Landlord to complete emergency repairs and an order restricting or setting conditions on the Landlord’s right to enter the rental unit.

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, who provided affirmed testimony. The Tenants did not attend. The Landlord attended the hearing at the scheduled time, ready to proceed, and was 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 was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”); however, I refer only to the relevant facts and issues in this decision.

At the request of the Landlord, copies of the decision and any orders issued in his favor will be e-mailed to him at the e-mail address provided in the hearing.

### Issue(s) to be Decided

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

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

Are the Tenants entitled to an order for the Landlord to complete emergency repairs or restricting or setting conditions on the Landlord's right to enter the rental unit?

### Background and Evidence

The 10 Day Notice in the documentary evidence before me, dated June 1, 2018, has an effective vacancy date of June 1, 2018, and indicates that as of June 1, 2018, the Tenants owed \$2,600.00 for several months of outstanding rent. The Landlord testified that the 10 Day Notice was posted to the door of the rental unit on June 1, 2018, as the Tenants would not answer the door.

The Landlord testified that he is unsure whether or not the Tenants are still in the rental unit as no one will answer the door when he knocks. The Landlord stated that he is seeking an Order of Possession so that the Tenants can be removed if necessary and the rental unit can be re-rented.

The Tenants applied to cancel the 10 Day Notice, for an order for the Landlord to complete emergency repairs and for an order restricting or setting conditions on the Landlord's right to enter the rental unit; however, they did not appear at the hearing of their own Application to provide any evidence or testimony.

### Analysis

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 June 4, 2018, three days after it was posted to the door of the 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. 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*.

Section 55 of the *Act* states the following with regards to an Order of Possession for the Landlord:

**Order of possession for the landlord**

- 55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if
- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
  - (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

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* which states:

**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 and dated by the Landlord, gives the address of the rental unit, states the effective date of the 10 Day Notice and the grounds for ending the tenancy, and is in the approved form. As a result, I find that the 10 Day Notice complies with section 52 of the *Act* and the Landlord is therefore entitled to an Order of Possession pursuant to section 55 of the *Act*.

Although the effective date of the 10 Day Notice does not comply with the minimum notice period under 46(1) of the *Act*, section 53 of the *Act* states that where the effective date of a Notice to End Tenancy does not comply with the notice requirements of the *Act*, the effective date is deemed to be changed to the earliest date that complies with the notice period. As a result, I find that the corrected effective date of the 10 Day notice is June 14, 2018. As the corrected effective date of the 10 Day Notice has passed and rent has not been paid in several months, the Order of Possession will be effective two days after service on the Tenants.

### Conclusion

The Tenants' Application is dismissed without leave to reapply 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: July 3, 2018

---

Residential Tenancy Branch