



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      CNR

### **Introduction**

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("the *Act*") for cancellation of the landlords' 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46.

SP, counsel for the landlords, provided submissions on behalf of the landlords in this hearing, and had full authority to do so. Both parties were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The landlords confirmed receipt of the tenants' application for dispute resolution ('application'). In accordance with section 89 of the *Act*, I find that the landlords were duly served with the Application. All parties confirmed receipt of each other's evidentiary materials.

The landlords testified that the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice), dated August 31, 2018, was served to the tenants on September 1, 2018, by way of posting to the tenants' door. In accordance with sections 88 and 90 of the *Act*, I find the tenants deemed served with the 10 Day Notice on September 4, 2018, three days after posting.

### **Issues to be Decided**

Should the landlords' 10 Day Notice be cancelled? If not, are the landlords entitled to an Order of Possession?

### **Background and Evidence**

This month-to-month tenancy began on June 22, 2018. Rent is currently set at \$900.00 per month, payable on the first of the month.

The landlords issued the 10 Day Notice as the tenants had only made partial payments towards the outstanding rent, and have failed to replace the security deposit payment that did not go through.

The landlords admit that the amount on the 10 Day Notice, \$1,717.00, is incorrect, but that at the time the 10 Day Notice was issued the tenants owed the following: \$300.00 for July 2018, \$100.00 for August 2018, and \$400.00 for the security deposit as well as a \$14.00 fee for the bounced cheque. The landlords had prematurely added the outstanding September 2018 rent. The landlords testified that since the 10 Day Notice was issued the tenants have failed to pay any of the outstanding rent, and have not paid any rent for September or October 2018 despite the fact that the tenants were reminded by another Arbitrator in a decision dated October 10, 2018 that “the Tenant is required to pay rent, unless ordered otherwise.” The landlords submitted detailed evidence for this hearing to support the outstanding rent and bounced cheque, including receipts for the partial payments made by the tenants on July 28, 2018 (\$600.00) and August 3, 2018 (\$800.00). The landlords noted in the hearing that the correspondence from the bank after the security deposit cheque bounced indicated that the account was closed.

The tenants admitted in the hearing that they owed \$100.00 for August 2018 rent. The tenants testified that they withheld rent due to the flood and the fact that the landlords did not provide internet services as agreed upon. The tenants testified that they had attempted to pay rent for October and delivered a letter to the landlord about how to make payment, but have received no response. The landlords testified that no letters have been received from the tenants, nor have the tenants made any attempts to pay any rent.

### **Analysis**

Section 26 of the Act, in part, states as follows:

#### **Rules about payment and non-payment of rent**

- 26** (1) 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.

I have considered the testimony of both parties in the hearing, as well as the evidence submitted for this application. Although the amount the tenants owe is disputed by the tenants, the tenants admit that they have not paid the August 2018 rent in full as

required by the *Act*. I find that the tenants did not have permission to withhold or deduct any rent, and accordingly I find that the tenants have failed to pay the outstanding rent as required by the *Act*. On this basis, I dismiss the tenants' application to cancel the 10 Day Notice dated August 30, 2018.

Section 55(1) of the *Act* reads as follows:

**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.

Section 52 of the *Act* requires that the Notice complies with the *Act*, specifically, that the Notice 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) state the grounds for ending the tenancy, and (e) be in the approved form.

Although I find that the amount of outstanding rent is incorrect on the 10 Day Notice, I find that the 10 Day Notice is still compliant with section 52 of the *Act*. However, I must still consider the validity of the 10 Day Notice, and whether the landlords had grounds to issue this 10 Day Notice for Unpaid Rent in accordance with section 46 of the *Act*, which states that "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."

As it was undisputed that the tenants did owe outstanding rent at the time the 10 Day Notice was issued, I find that the 10 Day Notice is still valid despite the incorrect amount indicated on the 10 Day Notice. The tenants' application to dispute this 10 Day Notice does not relieve the tenants from their responsibility to pay the outstanding rent, nor do I find that the tenants were in possession of any previous orders that had allowed them to withhold or deduct this rent. As I find the 10 Day Notice to be valid, and as I find that the 10 Day Notice complies with section 52 of the *Act*, I find that the landlords are entitled to a two (2) day Order of Possession against the tenants, pursuant to section 55 of the *Act*. The landlord will be given a formal Order of Possession which must be served on the tenants. If the tenants do not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

**Conclusion**

I dismiss the tenants' application to cancel the landlords' 10 Day Notice dated August 30, 2018. I find that the landlords' 1 Month Notice is valid and effective as of the corrected, effective date of September 14, 2018. I, therefore, grant an Order of Possession to the landlord effective two **days after service of this Order** on the tenant. Should the tenants and any occupant 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: October 19, 2018

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Residential Tenancy Branch