



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, CNR

### Introduction

This hearing dealt with an application by the tenants under the Residential Tenancy Act (the *Act*) for the following:

- An order cancelling a Two Month Notice to End Tenancy for Landlord's Use of Property ("Two Month Notice") pursuant to section 49; and
- An order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent ("Ten-Day Notice") pursuant to Section 46(4).

The landlord appeared at the hearing and provided affirmed testimony. The landlord was given the opportunity to make submissions as well as present oral and written evidence.

The tenants did not appear at the hearing. I kept the teleconference line open from the time the hearing was scheduled for ten minutes to allow the tenant the opportunity to call. The teleconference system indicated only the landlord and I had called into the hearing. I confirmed the correct participant code for the tenants had been provided.

The landlord stated she had not been served with the tenants' Notice of Hearing or Application for Dispute Resolution as required under section 89. She testified she telephoned the RTB two weeks ago to ask how to get an order of possession as the tenants had stopped paying rent. At that time, she was informed by an Information Officer that this hearing was scheduled today to hear the tenants' application to cancel the Ten-Day Notice and the One Month Notice. This was the only information the landlord had about this hearing.

While the Rules of Procedure provide in section 3.5 that an applicant must be prepared to demonstrate to the satisfaction of the Arbitrator that the respondent was served with the originating documents, Rule 7.3 provides as follows:

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

The landlord waived her right to service of the Notice of Hearing and Application for Dispute Resolution from the tenants. Accordingly, pursuant to Rule 7.3, I ordered the hearing proceed in the absence of the applicants and without evidence of service.

At the outset of the hearing, the landlord withdrew the Two Month Notice and this hearing was conducted only with respect to the Ten-Day Notice.

Section 55 of the *Act* requires, when a tenant submits an Application for Dispute Resolution 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 in compliance with the *Act*.

#### Issue(s) to be Decided

- Are the tenants entitled to cancellation of the Ten-Day Notice pursuant to section 46; and
- Is the landlord entitled to an order of possession pursuant to section 55.

#### Background and Evidence

The landlord testified she entered into a month-to-month tenancy agreement with the tenants beginning April 1, 2017. Rent is \$1,050.00 a month payable on the first of the month. The tenants provided a security deposit in the amount of \$575.00 at the beginning of the tenancy which is held by the landlord.

The landlord provided uncontradicted testimony that \$3,150.00 rent is owing by the tenants. The tenants have not paid rent for the months of July, August and September 2018.

The landlord testified the tenants continue to occupy the unit.

The landlord testified she issued a Ten-Day Notice on July 5, 2018 and personally served the Ten-Day Notice on the tenants that day. The landlord stated the tenants did not pay rent within the 5-day period. The tenants filed an Application for Dispute Resolution on July 10, 2018 for which the hearing is scheduled today.

A copy of the Ten-Day Notice was submitted as evidence.

### Analysis

I have reviewed all documentary evidence and testimony of the landlord.

I am satisfied the form and content of the Ten-Day Notice complies with Section 52 of the *Act*. I find the tenants were served with the 10-Day Notice on July 5, 2018 in accordance with Section 88 of the *Act*.

I find the tenants have not paid the overdue rent within the five-day period following service. I find the tenants applied for dispute resolution on July 10, 2018 and failed to serve the landlord with the Notice of Hearing and Application. The tenants failed to attend the hearing.

As the tenants failed to appear at this hearing, I dismiss the tenants' request to cancel the Ten-Day Notice without leave to reapply.

Pursuant to Section 55(1), the director **must** grant to the landlord an order of possession of the rental unit if the landlord's notice to end tenancy complies with Section 52 and the tenants' application is dismissed.

I therefore grant the landlord an order of possession.

### Conclusion

I grant the landlord an order of possession which is effective two days after service on the tenant.

This order must be served on the tenants.

If the tenants fail to comply with this order, the landlord may file the order with the Supreme Court of British Columbia to be 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: September 12, 2018

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Residential Tenancy Branch