



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute codes OPR MNR FF CNR OLC

### Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

Landlord:

- an order of possession for failure to pay rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenant’s security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover the filing fee for this application pursuant to section 72.

Tenant:

- cancellation of the landlord’s 10 Day Notice to End Tenancy for unpaid rent pursuant to section 46 (the 10 Day Notice);
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;

The hearing was conducted by conference call. The tenant did not attend this hearing, although I waited until 11:15 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 11:00 a.m. The landlord attended the hearing and was given a full opportunity to provide affirmed testimony, to present evidence and to make submissions.

The landlord was not able to provide any proof of service details for the landlord’s application. I am not satisfied that the tenants were served with the Landlord’s Application for Dispute Resolution pursuant to sections 89 & 90 of the Act. The landlord’s application is dismissed with leave to reapply.

As this hearing was initially scheduled in response to the tenants own application, the tenants ought to have been aware of the hearing date and time. The hearing into the tenants’ application proceeded in the absence of the tenants.

### Issues

Is the landlord entitled to an order of possession for unpaid rent or should the 10 Day Notice be cancelled?

Should the landlord be ordered to comply with the Act?

### Background and Evidence

The tenancy began on August 15, 2017 with a monthly rent of \$1950.00 payable on the 1<sup>st</sup> day of each month. The tenants paid a security deposit of \$975.00 at the start of the tenancy which the landlord continues to hold.

The landlord testified that on August 3, 2018 the tenants were served the 10 Day Notice by posting a copy to the door of the rental premises. A witnessed proof of service of this Notice was provided with the application.

The landlord testified that the tenant did not pay the outstanding amount of rent as indicated on the 10 Day Notice within five days of service of the Notice.

The landlord testified that the rental unit address on the tenancy agreement and the 10 Day Notice appears to be incorrect and the correct address is reflected in this application.

### Analysis

I am satisfied that the tenants were deemed served with the 10 Day Notice on August 6, 2018, three days after its posting, pursuant to sections 88 & 90 of the Act.

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 Notice or dispute the Notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch.

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 under the Act, I find the tenants application must be dismissed in its entirety as the tenants failed to participate in this hearing and provide evidence in support of their application.

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 landlord's 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.

Subsection 68(2) of the Act allows me to amend a notice given under the Act that does not comply with the Act. The 10 Day Notice contained an error with respect to the address of the rental unit. I find that this incorrect address does not go to the substance of the 10 Day Notice, that is, there was outstanding rent owed by the person to whom the notice was delivered. The tenants received and disputed the 10 Day Notice and ought to have known the notice applied to their rental unit. For these reasons, I am exercising my discretion to amend the 10 Day Notice to change the address to the address reflected in this application.

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.

#### Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenants. Should the tenants 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 01, 2018

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Residential Tenancy Branch