



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNR ERP MNDCT

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent (10 Day Notice), pursuant to section 46 of the *Act*,
- an order for emergency repairs pursuant to section 33 of the *Act*; and
- a monetary order for damage or compensation pursuant to section 67 of the *Act*.

The landlord, who was the respondent in this matter, appeared at the date and time set for the hearing of this matter. The tenant, who was the applicant in this matter, did not attend this hearing, although I left the teleconference hearing connection open until 11:35 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 11:00 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

Rule 7.3 of the Rules of Procedure provides as follows:

**7.3 Consequences of not attending the hearing** – 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 reapply.

Accordingly, in the absence of any evidence or submissions from the tenant in this matter, I order the tenant's application in its entirety dismissed without liberty to reapply.

Preliminary Issue - Procedural Matters

Section 55 of the *Act* requires that 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 tenant's Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with section 52 of the *Act*.

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession on the basis of the 10 Day Notice to End Tenancy?

### Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

The landlord testified that there was no written tenancy agreement only a verbal tenancy agreement between the parties.

The landlord provided the following unchallenged testimony regarding the terms of the verbal tenancy agreement:

- This month-to-month tenancy began approximately August 2017.
- Monthly rent of \$500.00 is payable on the first of the month.
- The tenant did not pay a security deposit at the beginning of the tenancy.

The landlord testified that the tenant receives income assistance and that her rent payments were previously directly deposited to the landlord. The landlord stated that prior to August 2018, the tenant stopped the direct deposit of her rent payments to the landlord. The landlord testified that the tenant did not pay her rent on August 1, 2018. By August 24, 2018, the landlord had still not received any rent payment from the tenant and issued a 10 Day Notice on that day by posting the notice to the tenant's door.

The landlord stated that the tenant received the notice since she contacted him the day the notice was served to her, and the tenant filed an Application for Dispute Resolution on August 29, 2018 to dispute the notice which is stated in her application to have been delivered on August 24, 2018 by posting on the door.

The landlord testified that in addition to August 2018, the tenant has failed to pay rent for the months of September and October 2018.

I note that neither party uploaded a copy of the 10 Day Notice into evidence for my review. The landlord testified that he had a picture of the 10 Day Notice saved on his phone. After the hearing concluded, the landlord submitted into evidence a copy of the 10 Day Notice that was served on the tenant, for my review.

I reviewed the 10 Day Notice and confirmed that the notice was: signed by the landlord; dated August 24, 2018; gave the address of the rental unit; stated an effective vacancy date of September 3, 2018; stated that the grounds for issuing the notice was a result of unpaid rent of \$500.00 not paid when due on August 1, 2018; and the notice was in the approved form.

### Analysis

Section 26 of the *Act* requires that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent. If a tenant fails to pay rent when due, section 46 of the *Act* permits a landlord to end the tenancy by issuing proper written notice to end tenancy using a 10 Day Notice to End Tenancy form.

A tenant who receives a 10 Day Notice to End Tenancy form under section 46 has five days after receipt to either pay rent in full or dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch.

In this case, I find that the tenant was served with a 10 Day Notice on August 24, 2018 and filed an application to dispute the notice on August 29, 2018. Accordingly, the tenant complied with the five-day time limit provided by section 46 of the *Act*.

Where a tenant applies to dispute a 10 Day Notice, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the 10 Day Notice is based.

In this matter, the landlord provided unchallenged testimony that the tenant failed to pay rent for the month of August 2018, and has also failed to pay rent for the months of September and October 2018.

After reviewing the 10 Day Notice submitted into evidence by the landlord, I find that the notice meets the requirements for form and content as set out in section 52 of the *Act*.

As such, I find that the landlord is entitled to an Order of Possession. As the effective vacancy date of the notice has now passed, the Order of Possession is effective two days after service on the tenant.

Conclusion

The tenant's application is dismissed in its entirety without leave to reapply, and the 10 Day Notice is upheld as it meets the requirements of section 52 of the *Act*.

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 tenant. The landlord is provided with this Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant 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