



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, DRI, LRE, FFT

### Introduction

This teleconference hearing was scheduled in response to an application by the Tenants under the *Residential Tenancy Act* (the “Act”) to cancel a 10 Day Notice to End Tenancy for Unpaid Rent (the “10 Day Notice”), to dispute a rent increase, to restrict the Landlord’s right to enter the rental unit, and for the recovery of the filing fee paid for this application.

One Tenant was present for the duration of the teleconference hearing, as was the Landlord and two family members (the “Landlord”). The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding package by mail. The Tenant submitted the 10 Day Notice into evidence, and the Landlord submitted an authorization letter for the Landlord’s family members to speak on his behalf. Neither party submitted any further documentary evidence.

All parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

### Issues to be Decided

Should the 10 Day Notice to End Tenancy for Unpaid Rent be cancelled?

If the 10 Day Notice to End Tenancy for Unpaid Rent is upheld, is the Landlord entitled to an Order of Possession?

Were the Tenants provided with an illegal rent increase?

Should the Landlord's right to access the rental unit be restricted or suspended?

Should the Tenants be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

### Background and Evidence

The Tenant provided testimony that the tenancy began in April 2015. Rent was initially \$750.00 and a security deposit of \$375.00 was paid at the outset of the tenancy. The Tenant stated that current monthly rent is \$1,000.00.

The Landlord stated that they purchased the home in August 2018 and became the Landlords at that time. They were in agreement that current monthly rent is \$1,000.00, due on the first of the month. They confirmed that they received a security deposit in the amount of \$375.00 from the previous owners of the home.

The parties were in agreement that there is no written tenancy agreement. The Tenant provided testimony that when they first rented the unit, they rented 2 bedrooms and 1 bathroom. However, in October 2015, they rented an additional bathroom and bedroom connected to the suite. The Tenant testified that they paid \$900.00 in monthly rent for the three-bedroom unit, until March 2018 when the previous landlord raised the rent to \$1,000.00.

The Tenant stated that beginning on September 13, 2018, the Landlord took over the third bedroom and second bathroom for their own use. It was the Tenant's understanding that the Landlord needed to use the bedroom for an event that was to take place over the period of one week. However, as the bedroom and bathroom was never returned to the Tenant's use, the Tenant did not pay rent for October 2018 or November 2018.

The Landlord was in agreement that they took back the third bedroom for their own use and stated that they needed the bedroom and bathroom for approximately two weeks. The Landlord testified that they intended to give the room back for the Tenant's use for

October 1, 2018, but when they went to speak to the Tenants, they were told they would be moving out on October 20, 2018.

The Landlord served the Tenants with a 10 Day Notice on October 5, 2018 by giving it to the Tenant in person.

The 10 Day Notice was submitted into evidence and states that \$1,000.00 was unpaid as due on October 1, 2018. The effective end of tenancy date of the 10 Day Notice is stated as October 15, 2018. The Landlord testified that they have not received any payments towards the rent owing for October or November 2018.

The Tenant testified that they have not paid the rent for October or November 2018 due to not receiving the third bedroom and second bathroom back for their own use, and also due to the Landlord trying to increase the rent. He stated that the Landlord initially wanted to increase the rent by \$400.00 and then by \$200.00. The Tenant also stated that there should have been a reduction in rent due to losing use of a bedroom and bathroom.

The Landlord provided testimony that they spoke to the Tenants about possibly increasing the rent but did not provide them with any verbal or written rent increase notices.

The Tenant has also applied to restrict or suspend the Landlord's right to enter. He stated that the Landlord or family members of the Landlord speak to them every time they leave their home. The Landlord stated that they went to the Tenant's unit 2 or 3 times to talk about the bedroom, as well as the rent owing.

### Analysis

I refer to Section 46(1) that states that a 10 Day Notice can be given by a landlord if rent is unpaid on the day after it is due. While I find that it was absolutely unacceptable for the Landlord to take back possession of one of the bedrooms and one of the bathrooms of the rental unit, rent is still due as required under Section 26 of the *Act*.

If the Tenants wanted to dispute the possession of the third bedroom, and/or to dispute the monthly rental amount if the number of bedrooms had changed, they had the option of filing an Application for Dispute Resolution.

However, due to the fact that the Tenant did not pay any rent for continuing to reside in the rental unit, I find that the 10 Day Notice was valid and issued in accordance to Section 46 of the *Act*.

As this Application is not regarding the amount of rent due, I find that it is not the matter before me to determine how much the Tenant should have paid for no longer having access to one bedroom and one bathroom. Instead, the determination is whether there was unpaid rent due when the 10 Day Notice was served to the Tenants and whether there is still any outstanding rent.

In accordance with Section 46(4), a tenant has 5 days in which to dispute a 10 Day Notice or pay the rent owing. Although the Tenants applied to dispute the notice on October 9, 2018, within the 5 days allowable, both parties were in agreement that the outstanding rent has not been paid.

Therefore, I dismiss the Tenant's application to cancel the 10 Day Notice. Pursuant to Section 55(1) of the *Act*, when a tenant's application to dispute a notice to end tenancy is dismissed, and the notice complies with Section 52 of the *Act*, the Landlord must be granted an Order of Possession.

Upon review of the 10 Day Notice submitted into evidence, I find that it is in compliance with Section 52 of the *Act*, and therefore grant the Landlord a two-day Order of Possession.

As for the Tenants' application to dispute an illegal rent increase, I do not find sufficient evidence before me to establish that an illegal rent increase was provided, or to establish the rental amount that was paid prior to the rent being raised to \$1,000.00. I note that in accordance with the *Residential Tenancy Branch Rules of Procedure*, the onus to prove a claim, on a balance of probabilities, is on the party making the claim.

Therefore, due to insufficient evidence I cannot make a determination about whether an illegal rent increase was given to the Tenants. I dismiss the Tenants' claim to dispute an illegal rent increase.

As for the Tenants' claim to restrict or suspend the Landlord's right to enter the rental unit, I also do not find sufficient evidence to establish that the Landlord is entering the unit without proper notice, or without reason. Therefore, I dismiss the Tenants' claim to restrict or suspend the Landlord's right to enter the unit.

As the Tenants were not successful in their Application, I decline to award the recovery of the filing fee paid for the Application for Dispute Resolution.

Conclusion

The Tenants' Application is dismissed, without leave to reapply.

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: November 06, 2018

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Residential Tenancy Branch