



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNR, LRE

### Introduction

This teleconference hearing was scheduled in response to an application by the Tenant under the *Residential Tenancy Act* (the “Act”) to cancel a 10 Day Notice to End Tenancy for Unpaid Rent (the “10 Day Notice”), and to restrict or suspend the Landlord’s right to enter the rental unit.

The Tenant and the Landlord were present for the duration of the teleconference hearing. The parties were affirmed to be truthful in their testimony. The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding package, but did not receive copies of the Tenant’s evidence. The Landlord did not submit any evidence prior to the hearing.

Rule 3.17 of the *Residential Tenancy Branch Rules of Procedure* state that if evidence is not served on the other party as required, it may not be accepted. As the Tenant did not serve a copy of his documentary evidence to the Landlord, the evidence will not be considered as part of this decision, with the exception of the 10 Day Notice that is relevant to the matter at hand.

### Preliminary Matters

The Tenant did not provide testimony or evidence related to his claim to restrict the Landlord’s right to enter the rental unit, as the focus of the hearing was on the 10 Day Notice to End Tenancy for Unpaid Rent. In accordance with Rule 2.3 of the *Residential Tenancy Branch Rules of Procedure*, unrelated claims may be dismissed. Therefore, I use my discretion to dismiss the Tenant’s claim regarding restricting or suspending the Landlord’s right to enter, with leave to reapply. This decision will address the dispute over the 10 Day Notice.

At the outset of the hearing, the Tenant stated that he wished to withdraw his Application for Dispute Resolution regarding the 10 Day Notice, as the rent has since been paid in full. However, as stated in Rule 5.0.1 of the *Residential Tenancy Branch Rules of Procedure*, a dispute over a notice to end tenancy cannot be withdrawn by a tenant without the landlord's consent.

The Landlord confirmed that the 10 Day Notice has not been cancelled. Therefore, the Application for Dispute Resolution was not withdrawn, and the hearing continued.

### 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?

### Background and Evidence

The parties were in agreement as to the details of the tenancy. The tenancy began on January 1, 2018. Monthly rent is \$625.00 and a security deposit of \$312.50 was paid at the outset of the tenancy. Rent is due on the first day of each month.

The Landlord provided testimony that a 10 Day Notice was served to the Tenant on October 2, 2018 by posting on his door. The 10 Day Notice was submitted into evidence and states that \$325.00 was unpaid as due on October 1, 2018. The notice states October 12, 2018 as the effective end of tenancy date.

The Landlord stated that on October 2, 2018 the Tenant paid \$300.00 towards October rent, leaving an amount of \$325.00 unpaid. On October 23, 2018, the Tenant paid \$325.00 for the remainder of October 2018 rent. On November 1, 2018, the Tenant paid the full rent for November 2018 in the amount of \$625.00.

The Tenant testified that he paid \$300.00 towards October 2018 rent on September 28, 2018. He was in agreement that he paid \$325.00 on October 23, 2018 and \$625.00 on November 1, 2018. The Tenant stated that he received the 10 Day Notice on October 2, 2018. He filed an Application for Dispute Resolution on October 5, 2018.

The Tenant provided testimony that he paid partial rent due to financial difficulties, as well as being disturbed by the downstairs neighbour. The Tenant stated that the downstairs neighbour was harassing him over a period of 5 months and was also causing loud banging noises early in the morning.

The Tenant testified that the downstairs neighbour has since moved out, and therefore he will pay rent in full from now on, instead of making partial payments.

### Analysis

I refer to Section 46(1) of the *Act* which states that a 10 Day Notice may be provided on any day after the rent is due if an amount of rent is unpaid. As the parties were in agreement that as of October 2, 2018 there was an amount of \$325.00 outstanding from the rent that was due on October 1, I find that the 10 Day Notice was provided in accordance with the *Act*.

Section 26(1) of the *Act* states that a tenant must pay rent when it is due. The parties were in agreement that rent in the amount of \$625.00 is due on the first day of each month. A tenant may not choose to pay the rent owing in partial payments.

As stated in Section 46(4) of the *Act*, a tenant has 5 days from receipt of the 10 Day Notice to pay the rent owing, or file an Application for Dispute Resolution. The Tenant received the notice on October 2, 2018 and filed an Application on October 5, 2018. As such, I find that he filed the Application within the timeframe provided for under the *Act*.

However, as the 10 Day Notice was found to be valid, and the Tenant did not pay the rent owing within the 5 days allowable, I determine that the 10 Day Notice is valid. The Tenant's Application to cancel the 10 Day Notice is dismissed, without leave to reapply.

Pursuant to Section 55(1) of the *Act*, when a Tenant's Application to cancel a notice to end tenancy is dismissed, the Landlord must be granted an Order of Possession, if the notice complies with Section 52 of the *Act*.

Upon review of the 10 Day Notice submitted into evidence, I find it to be in compliance with Section 52 of the *Act*. Therefore, I grant the Landlord an Order of Possession effective November 30, 2018.

Conclusion

The Tenant's Application to cancel the 10 Day Notice, dated October 2, 2018, is dismissed and the Notice is upheld. I grant an Order of Possession to the Landlord effective **on November 30, 2018 at 1:00 pm**. This Order must be served on the Tenant. 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: November 07, 2018

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Residential Tenancy Branch