



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR

### Introduction

This hearing dealt with the tenants' application for cancellation of the landlords' 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46 of the *Residential Tenancy Act* (the *Act*).

Landlord H.S, the landlords' agent and the tenants attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlords' agent (the landlord) and Tenant J.S. (the tenant) indicated that they would be the primary speakers during this hearing.

While I have turned my mind to all the documentary evidence, including the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The landlord confirmed that they received the Application for Dispute Resolution (the Application) by way of registered mail. In accordance with section 89 of the *Act*, I find that the landlord was duly served with the Application.

The landlord testified that they sent their documentary evidence to each tenant by way of registered mail on October 19, 2018. The landlord provided copies of the Canada Post Tracking Numbers to confirm these registered mailings. In accordance with section 88 of the *Act*, I find that the tenants were deemed served with the evidence on October 24, 2018.

The tenant and the landlord confirmed that the tenants' evidence, which was submitted to the Residential Tenancy Branch, was not served to the landlord.

Rule 3.14 of the Residential Tenancy Branch Rules of Procedure states that documentary evidence that is intended to be relied on at the hearing must be received by the respondent not less than 14 days before the hearing. I find that the tenants did

not serve the landlord with their evidence and that the landlord may be prejudiced by this as they did not have a chance to respond to the tenants' evidence. For this reason the tenants' evidence is not accepted for consideration.

The tenant confirmed that they received the 10 Day Notice on September 28, 2018, which was posted to their door on the same day. In accordance with section 88 of the Act, I find that the tenants were duly served with 10 Day Notice on September 28, 2018.

### Issue(s) to be Decided

Should the landlords' 10 Day Notice be cancelled? If not, are the landlords entitled to an Order of Possession?

### Background and Evidence

Written evidence was provided by the landlords that this tenancy began on March 01, 2018, with a monthly rent of \$4,000.00, due on the first day of each month. The landlord confirmed that they are currently retaining a security deposit in the amount of \$2,000.00.

A copy of the signed 10 Day Notice, dated September 27, 2018, and identifying \$16,000.00 in unpaid rent with an effective date of October 08, 2018, was also included in the landlords' evidence.

The tenant confirmed that they have not paid any rent since June 2018. The tenant stated that they had an emergency repair in the amount of \$280.00. The tenant proposed to continue the tenancy based on future payments in the amount of \$12,000.00 over three months.

The landlord testified that the tenants have not paid any rent since June 2018. The landlord stated that they were seeing to end the tenancy and obtain an Order of Possession based on the unpaid rent owing from June 2018 to the current month of November 2018.

### Analysis

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.

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 as indicated on the 10 Day Notice or dispute the 10 Day Notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. As I have found the 10 Day Notice was duly served to the tenants on September 28, 2018, I find the tenant had until October 03, 2018, to dispute the 10 Day Notice or to pay the full amount of the arrears.

I find the tenants submitted their Application on October 01, 2018, within the five day time limit permitted under section 46 (4) the Act; however, I find the tenant did not provide any evidence that they paid the monthly rent within the five days allowed by the Act or were legally entitled to withhold any rent.

I find that the tenant did not establish that their emergency repair was actually an emergency under section 33 of the Act or provide any evidence that they actually paid the amount stated. Even if they had proven the emergency repair and the amount paid, I find that the amount of the emergency repair is not equal to the amount of unpaid rent being withheld.

For the above reasons, the tenants' Application to cancel the 10 Day Notice is dismissed, without leave to reapply

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Section 55(1) of the *Residential Tenancy Act* provides that if a tenant makes an application to set aside a landlord's notice to end a tenancy and the application is dismissed, the Arbitrator must grant the landlord an order of possession if the notice complies with section 52 of the Act.

I find that the 10 Day Notice complies with section 52 of the Act.

The tenant requested that the Order of Possession be dated for November 16, 2018, to which the landlord agreed. Therefore, I grant the landlords an Order of Possession dated for November 16, 2018.

Conclusion

I grant an Order of Possession to the landlords effective **on November 16, 2018, after service of this Order** on the tenant(s). Should the tenant(s) or any occupant on the premises 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 09, 2018

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Residential Tenancy Branch