



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MT, CNC

### Introduction

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

- more time to cancel a Notice to End Tenancy, pursuant to section 66; and
- cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to section 46.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant testified that the landlord was personally served the notice of dispute resolution package on October 29, 2018. The landlord confirmed receipt of the notice of dispute resolution package in person on October 29, 2018. I find that the landlord was served with this package on October 29, 2018, in accordance with section 89 of the *Act*.

I note that 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 Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

### Issue(s) to be Decided

1. Is the tenant entitled to more time to cancel a Notice to End Tenancy, pursuant to section 66 of the *Act*?

2. Is the tenant entitled to cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to section 46 of the *Act*?
3. If the tenant's application is dismissed and the landlord's Notice to End Tenancy is upheld, is the landlord entitled to an Order of Possession, pursuant to section 55 of the *Act*?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agree that this tenancy began in January of 2017 and is currently ongoing. Both parties agree that monthly rent is \$600.00 but do not agree on what day of the month rent is due; however, both parties agree that rent is due in advance of the month for which it is to be applied. For example, rent for the month of September is due in August.

Both parties agreed that the tenant paid the landlord the following amounts on the following dates for rent:

<b>Date Payment Made</b>	<b>Amount of Payment</b>	<b>Month Rent Applied To</b>
October 3, 2018	\$600.00	September 2018
October 29, 2018	\$1,200.00	October and November 2018
December 1, 2018	\$600.00	December 2018

The landlord testified that rent in the amount of \$600.00 for the month of October 2018 was due on September 23, 2018. Both parties agreed that October 2018's rent was paid on October 29, 2018.

The landlord testified that on October 12, 2018 a 10 Day Notice to End Tenancy for Unpaid Rent with an effective date of October 23, 2018 (the "10 Day Notice") was posted on the tenant's door. The tenant confirmed receipt of the 10 Day Notice on October 14, 2018. The landlord testified that the 10 Day Notice was issued because the tenant did not pay rent for October 2018 when it was due.

The tenant testified that she attempted to file to dispute the 10 Day Notice on October 17, 2018, but her application was deficient in some way and was not accepted. The tenant testified that she attempted to file to dispute the 10 Day Notice again on October 25, 2018. The tenant entered into evidence a Service BC receipt and coversheet dated October 25, 2018. The tenant testified that she did not file to dispute the 10 Day Notice sooner because she didn't think of it and had a lot of things going on in her life at that time.

### Analysis

Based on the testimony of both parties I find that rent was due on or before the last day of each month for the following month. I find that the service of the 10 Day Notice was effected on the tenant on October 14, 2018, in accordance with section 88 of the *Act*. Pursuant to section 53 of the *Act*, I find that the corrected effective date of the 10 Day Notice is October 24, 2018. Upon review of the 10 Day Notice, I find that it complies with the form and content requirements of section 52 of the *Act*.

I find that the tenant filed to dispute the 10 Day Notice on October 25, 2018. The tenant did not prove, on a balance of probabilities, that her application to dispute the 10 Day Notice was started on an earlier date.

Section 66 of the *Act* states that an arbitrator may extend a time limit established by this Act only in exceptional circumstances. Policy Guideline 36 states:

The word "exceptional" means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend that time limit. The word "exceptional" implies that the reason for failing to do something at the time required is very strong and compelling. Furthermore, as one Court noted, a "reason" without any force of persuasion is merely an excuse. Thus, the party putting forward said "reason" must have some persuasive evidence to support the truthfulness of what is said.

In this case, the tenant testified that she didn't file for dispute resolution earlier because she didn't think of it and had a lot of things going on in her life at that time. Pursuant to section 66 of the *Act* and Policy Guideline 36, I find that the tenant hasn't proven the existence of exceptional circumstances preventing her from filing for dispute resolution within the timelines of section 46 of the *Act*.

Based on the testimony of both parties, I find that rent for October 2018 was not paid in September 2018 as per the agreement between the parties. I find that October 2018's rent was paid on October 29, 2018, more than five days after receipt of the 10 Day Notice.

In accordance with section 46(5) of the *Act*, the tenant's failure to either pay rent or file to dispute the 10 Day Notice within five days of receiving it, led to the end of this tenancy on the corrected effective date of the notice, that being October 24, 2018. I therefore dismiss the tenant's application, without leave to reapply.

Pursuant to section 55 of the *Act*, I find that the landlord is entitled to a 2-day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

### Conclusion

The tenant's application is dismissed without leave to reapply.

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service 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: December 04, 2018

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Residential Tenancy Branch