



# 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 tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- cancellation of the landlords' 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated December 3, 2018 ("10 Day Notice"), pursuant to section 46.

The tenant did not attend this hearing, which lasted approximately 13 minutes. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application.

The landlord testified that the tenant was served with the landlord's 10 Day Notice on December 3, 2018, by way of posting to her rental unit door. The notice indicates an effective move-out date of December 13, 2018. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's 10 Day Notice on December 6, 2018, three days after its posting. The tenant indicated that she received the notice on December 3, 2018, in her application when she applied to cancel the notice.

Pursuant to section 64(3)(c) of the *Act*, I amend the tenant's application to correct the landlord's first and middle names. The landlord clarified his name and consented to this amendment during the hearing. I find no prejudice to the tenant in making this amendment.

Preliminary Issue – Dismissal of Tenant's Application

Rule 7.3 of the Residential Tenancy Branch ("RTB") *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 re-apply.*

In the absence of any evidence or submissions from the tenant, I order the tenant's application dismissed without leave to reapply.

Pursuant to section 55 of the *Act*, if I dismiss the tenant's application to cancel a 10 Day Notice, the landlord is entitled to an order of possession if the notice meets the requirements of section 52 of the *Act*.

#### Issues to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

#### Background and Evidence

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

The landlord testified regarding the following facts. This month-to-month tenancy began on November 15, 2017. Monthly rent in the amount of \$1,125.00 is payable on the first day of each month. A security deposit of \$550.00 was paid by the tenant and the landlord continues to retain this deposit. A written tenancy agreement was signed with the landlord and the tenant's daughter. The tenant's daughter vacated the rental unit approximately three to four months ago but the tenant remained and the landlord continued the tenancy with the tenant. The tenant continues to reside in the rental unit.

The landlord issued the 10 Day Notice for unpaid rent of \$1,875.00 due on December 1, 2018. There is a notation beside the rent due, indicating that \$750.00 was for November 2018 rent and \$1,125.00 was for December 2018 rent. The landlord testified

that the tenant failed to pay the above rent amounts as well as additional rent of \$1,125.00 for January 2019.

The landlord seeks an order of possession based on the 10 Day Notice.

### Analysis

According to subsection 46(4) of the *Act*, a tenant may dispute a 10 Day Notice by making an application for dispute resolution within five days after the date the tenant was deemed to have received the notice. The tenant was deemed to have received the 10 Day Notice on December 6, 2018, and filed her application to dispute it on December 5, 2018. Therefore, she was within the five day time limit to dispute the 10 Day Notice. However, the tenant did not appear at this hearing to present her application.

Section 26 of the *Act* requires the tenant to pay rent on the date indicated in the tenancy agreement, which in this case required the tenant to pay by the first day of each month.

On a balance of probabilities and for the reasons stated below, I accept the landlord's undisputed evidence at this hearing, as the tenant did not attend. The tenant failed to pay the full rent due of \$1,875.00 due on December 1, 2018, within five days of being deemed to have received the 10 Day Notice.

In accordance with section 46(5) of the *Act*, the failure of the tenant to pay the full rent within five days or to appear at this hearing to pursue her application, led to the end of this tenancy on December 16, 2018, the corrected effective date on the 10 Day Notice. In this case, this required the tenant and anyone on the premises to vacate the premises by December 16, 2018.

Section 55(1) of the *Act* reads as follows:

*55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if*

- (a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and*
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.*

As noted above, I dismissed the tenant's application. I find that the landlord's 10 Day Notice complies with section 52 of the *Act*. Accordingly, I find that the landlord is entitled to an Order of Possession effective two (2) days after service on the tenant.

Conclusion

I grant an Order of Possession to the landlord effective two (2) days after service on the tenant. Should the tenant or anyone 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.

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

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: January 15, 2019

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Residential Tenancy Branch