



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding HIGHLAND COURT  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR, FF, CNR, ERP, MNDC

### Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- an order of possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover its filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order to the landlord to make emergency repairs to the rental unit pursuant to section 33.

Both parties attended the hearing via conference call and provided affirmed testimony. The landlord's agent (the landlord) stated that the landlord's notice of hearing package and submitted documentary evidence was served to the tenant by posting it to the rental unit door. The tenant disputed this stating that no such package was received. The landlord was unable to provide any further details of a date of service or any type of proof of service. The tenant stated that the landlord was served with his notice of hearing package and the submitted documentary evidence by sliding it under the office door. The landlord confirmed service in this manner. Neither party raised any other service issues. I accept the undisputed affirmed evidence of both parties and find that

the landlord has failed to properly serve the tenant with the notice of hearing package and the submitted documentary evidence as per sections 88 and 89 of the Act.

Although the tenant attended regarding his own application for dispute, I find that the landlord's application is dismissed with leave to reapply for lack of service. As for the tenant's application, I find that as the landlord has confirmed receipt of the tenant's application for dispute and that neither party raised any further service issues in that regard, I deem the landlord sufficiently served as per section 90 of the Act.

### Preliminary Issue(s)

The tenant also applied for emergency repairs "(A/C) caught fire. Patio Door w/d not open still not fixed. Heaters in both rooms still not fixed. A/C still not fixed" and a monetary request for compensation of \$625.00 in which the tenant claims that the landlord was responsible for the tenant's late payment of rent. The tenant confirmed that these were unrelated to unpaid rent.

RTB Rules of Procedure 2.3 states that "if in the course of a dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may dismiss unrelated disputes contained in a single application with or without leave to reapply." In this regard I find that the tenant has applied for a monetary order for compensation and an order for the landlord to make emergency repairs. As these sections of the tenant's application are unrelated to the main section which is to cancel the notice to end tenancy issued for unpaid rent, I dismiss these sections of the tenant's claim with leave to reapply. The hearing shall proceed on the below listed issues.

### Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 10 Day Notice?

### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

This tenancy began on January 1, 2018 on a fixed term tenancy ending on December 1, 2018 and then thereafter on a month-to-month basis as per the submitted copy of the signed tenancy agreement dated December 27, 2017. The monthly rent is \$1,250.00 payable on the 1<sup>st</sup> day of each month. A security deposit of \$625.00 was paid.

In this case, both parties confirmed that the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent, dated January 7, 2019 by posting it to the rental unit door on January 7, 2019. The 10 Day Notice states that the tenant failed to pay rent of \$1,274.74 that was due on January 1, 2019.

The landlord claims that the tenant failed to pay rent of \$1,472.74 which consist of:

\$24.74	Unpaid Rent, December 2018
\$1,250.00	Unpaid Rent, January 2019

The tenant provided affirmed testimony that he was not sure, but could not dispute the December 2018 unpaid rent of \$24.74. The tenant stated that he did not pay January 2019 rent of \$1,250.00 as it was part of an ongoing dispute over monetary compensation and emergency repairs. The tenant stated that he was withholding the payment of rent.

### Analysis

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

I find, on a balance of probabilities, the tenant did not pay or attempt to pay his rent when it was due or within the five days provided for pursuant to section 46. The tenant did not provide any evidence that would indicate that he was entitled to deduct or withhold any amount from rent. The tenant does not dispute that he has not paid his rent.

As the tenant is not entitled to have the 10 Day Notice cancelled, I find that the landlord is entitled to a two-day order of possession pursuant to section 55 of the Act..

### Conclusion

The tenant's application is dismissed.  
The landlord is granted an order of possession.

This order must be served upon the tenant. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

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: February 28, 2019

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Residential Tenancy Branch