



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, MNDCT, LRE, AAT, OLC

### Introduction

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

- cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to section 46;
- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67;
- an Order that the landlord's right to enter be suspended or restricted, pursuant to section 70;
- an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62; and
- an Order to allow access for the tenant or their guests, pursuant to sections 30 and 70.

Tenant R.W. (the "tenant"), the landlord and the landlord's witness 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 served the notice of dispute resolution package by registered mail on January 4, 2018. The landlord confirmed receipt of the dispute resolution package but did not know on what date. I find that the landlord was deemed served with this package on January 9, 2019, five days after its mailing, in accordance with sections 89 and 90 of the *Act*.

At the beginning of the hearing both parties agreed that the address of the subject rental property on the tenants' application for dispute resolution contained a spelling error. Pursuant to section 64, I amend the tenants' application to reflect the correct spelling of the address of the subject rental property.

### Preliminary Issue- Severance

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the 10 Day Notice to End Tenancy for unpaid rent and the continuation of this tenancy is not sufficiently related to any of the tenants' other claims to warrant that they be heard together. The parties were given a priority hearing date in order to address the question of the validity of the Notice to End Tenancy.

The tenants' other claims are unrelated in that the basis for them rests largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the 10 Day Notice. I exercise my discretion to dismiss all of the tenants' claims with leave to reapply except cancellation of the notice to end tenancy.

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. Are the tenants entitled to cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to section 46 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.

The landlord testified that this tenancy began in May of 2018 as part of the tenant's employment with the landlord. The landlord testified that the tenant was only permitted to reside at the subject rental property while he was employed by the landlord and that rent was \$850.00 per month due on the first day of every month. The landlord testified that the rental rate of the subject rental property when not tied to employment is \$1,650.00 per month. The landlord testified that no tenancy agreement was signed between the parties. The landlord testified that the tenant quit in November of 2018 and is no longer living at the subject rental property, but his wife is.

The tenant testified that the tenancy is not tied to his employment and that rent is \$850.00 per month due on the first day of each month. The tenant agreed that he stopped working for the landlord in November 2018 and that he no longer lives at the subject rental property, but his wife does.

Both parties agreed on the following facts. The tenants paid no rent for December 2018, \$850.00 was paid for January 2019 and no rent was paid for February 2019. The landlord issued the tenants a receipt for January's rent which stated that it was "for use and occupancy only". The January 2019 receipt was entered into evidence.

The tenant testified that December's rent was not paid because the landlord owed him money for work he completed on the landlord's truck.

The landlord testified that on December 28, 2018 he posted a 10 Day Notice to End Tenancy for unpaid rent with an effective date of January 6, 2019 (the "10 Day Notice") on the tenants' door. The witness testified that he observed the landlord post the 10 Day Notice on the tenants' door on December 28, 2018. The tenant confirmed receipt of the 10 Day Notice but did not recall on what date.

The 10 Day Notice states that the tenants failed to pay \$2,230.00 that was due on December 1, 2018. In the signature section of the 10 Day Notice, the landlord printed his name and in the section for landlord or agent's name, the landlord wrote the name of his service witness.

### Analysis

I find that service of the 10 Day Notice was effected on the tenants on December 31, 2018, in accordance with sections 88 and 90 of the *Act*.

Residential Tenancy Policy Guideline 11 states that an arbitrator is permitted to amend a Notice to End Tenancy where the person receiving the notice knew, or should have known, the information that was omitted from the notice, and it is reasonable in the circumstances. In determining if a person "should have known" particular facts, an arbitrator will consider whether a reasonable person would have known these facts in the same circumstances. In determining whether it is "reasonable in the circumstances" an arbitrator will look at all of the facts and consider, in particular, if one party would be unfairly prejudiced by amending the notice.

I find that the tenants knew or ought to have known the landlord's name should have been stated in the section for landlord or agent's name and the landlord's signature should have been in the signature section. The tenants were aware of their landlord's name and that he issued them with the 10 Day Notice. I find that the tenants are not unfairly prejudiced by amending the notice. Pursuant to section 68 of the *Act*, I amend the 10 Day Notice to include the name of the landlord and his signature.

Section 46 of the *Act* states that a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

Section 53(2) of the *Act* states that if the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section. The earliest date permitted under section 46 of the *Act* is January 10, 2019. I find that the corrected effective date of the 10 Day Notice is January 10, 2019.

Section 26(1) of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*. I find that the tenants were obligated to pay the monthly rent of at least \$850.00 per month on the first day of each month from December 2018- February 2019 which they failed to do. Whether or not the landlord owes the tenant money for work completed on the landlord's truck does not impact the tenants' obligation to pay rent on time. I therefore dismiss the tenant's application to cancel the 10 Day Notice.

Section 55 of the *Act* states that 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.

I find that the amended 10 Day Notice complies with section 52 of the *Act*. As I have also found that the tenants' application to cancel the Day Notice is dismissed I find that, pursuant to section 55 of the *Act*, the landlord is entitled to a two-day Order of Possession.

### Conclusion

The tenants' application to cancel the 10 Day Notice is dismissed.

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service on the tenants**. Should the tenants 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: February 13, 2019

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Residential Tenancy Branch