



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNR, DRI, ERP, LAT, LRE, OLC, RP, RR, MNDCT

### Introduction

On January 21, 2019, the Tenant filed an Application for Dispute Resolution under the *Residential Tenancy Act* (“the *Act*”) to cancel a 10-Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice), to dispute a rent increase, to request a monetary order for damages or compensation under the Act, to request an order for the Landlord to comply with the *Act*, to request an order for the Landlord to conduct regular repairs to the rental unit, for an order for the Landlord to make emergency repairs to the rental unit, to request a rent reduction for repairs, to request authorization to change the locks, and to suspend or set conditions on the Landlords’ right to enter the rental unit. The matter was set for a conference call.

The Landlord’s Counsel (the “Landlord”), as well as the Tenant, attended the hearing; the Tenant was affirmed to be truthful in her testimony. The Landlord and Tenant were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Matters

I have reviewed the Tenant's application, and I note that she has applied to cancel a Notice to end tenancy as well as for several other issues. I find that some of these other issues are not related to the Tenant's request to cancel the Notice. As these matters do not relate directly to a possible end of the tenancy, I apply section 2.3 of the Residential Tenancy Branches Rules of Procedure, which states:

#### **2.3 Related issues**

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

I explained to the parties, at the outset of the hearing, that I am dismissing with leave to reapply, the Tenant's claims to dispute a rent increase, to request a monetary order for damages or compensation under the Act, to request an order for the Landlord to comply with the Act, to request an order for the Landlord to conduct regular repairs to the rental unit, for an order for the Landlord to make emergency repairs to the rental unit, to request a rent reduction for repairs, to request authorization to change the locks, and to suspend or set conditions on the Landlords' right to enter the rental unit.

I will proceed with this hearing on the Tenant's claim to cancel the Notice.

### Issues to be Decided

- Should the Notice issued on January 18, 2019, be cancelled?
- If not, is the Landlord entitled to an order of possession?

### Background and Evidence

Both parties agreed that the tenancy began on March 31, 2016, as a one-year fixed term tenancy that rolled into a month to month tenancy at the end of the fixed term. The parties also agreed that the rent for this rental unit is \$2,900.00 per month, and that the Tenant paid a \$1,450.00 security deposit for this tenancy. A copy of the tenancy agreement was submitted into documentary evidence by the Landlord.

The Landlord testified that the Notice was served to the Tenant, on January 18, 2019, by posting it to the front door of the rental unit. The 10-Day Notice has an effective date of January 28, 2019, and an outstanding rent amount of \$2,900.00 and \$283.95 in utilities.

The Landlord testified that, as of the date of this hearing, the rent for this tenancy remains unpaid for January and February 2019 and that the \$283.95 in utilities has not been paid. The Landlord is requesting an order of possession to enforce the Notice.

The Tenant testified that she had not paid the rent for January and February 2019, but that she had paid the utilities.

During the hearing, the Landlord and the Tenant agreed, that if the Notice were not cancelled, the order of possession would be dated for February 28, 2019.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Section 46 of the *Act* requires that upon receipt of a Notice to End Tenancy for Non-payment of Rent a tenant must, within five days, either pay the amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does not do either of these things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice under section 46(5).

### **Landlord's notice: non-payment of rent**

- 46** (1) 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.
- (2) A notice under this section must comply with section 52 [*form and content of notice to end tenancy*].
- (3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.
- (4) Within 5 days after receiving a notice under this section, the tenant may

- (a) pay the overdue rent, in which case the notice has no effect, or
  - (b) dispute the notice by making an application for dispute resolution.
- (5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant
- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
  - (b) must vacate the rental unit to which the notice relates by that date.

I find that the Tenant received the 10-Day notice on January 21, 2019, three days after it was posted to the front door of the rental unit, pursuant to section 90 of the Act, and that she did apply to dispute the Notice within the legislated timeline.

I accept the testimony of both parties that the Tenant has not paid the rent for January and February 2019. Therefore, I find that the Tenant is in breach of section 26 of the Act by not paying the rent in accordance with the tenancy agreement and I dismiss the Tenant's application to cancel the Notice.

Section 55 of the *Act* states that a landlord may request an order of possession if a notice to end the tenancy has been given by the landlord and the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired.

#### **Order of possession for the landlord**

- 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.

I have reviewed the Notice to End Tenancy, and I find the Notice complies with section 52 of the *Act*. As I have dismissed the Tenant's application, pursuant to section 55 of the *Act*, I must grant the Landlords an order of possession to the rental unit.

I find that the Landlord is entitled to an order of possession, pursuant to section 55 of the *Act*, effective not later than 1:00 p.m. on February 28, 2019. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that the costs of such enforcement are recoverable from the Tenant.

### Conclusion

I dismiss the Tenants' application to cancel the Notice issued on January 18, 2019.

I grant an **Order of Possession** to the Landlord effective not later than 1:00 p.m. on **February 28, 2019**. The Tenants must be served with this Order. 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 15, 2019

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Residential Tenancy Branch