



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

CNR

### Introduction

This hearing was convened in response to the Tenants' Application for Dispute Resolution, in which the Tenants applied to cancel a Notice to End Tenancy for Unpaid Rent.

The Tenant stated that the Application for Dispute Resolution, the Notice of Hearing, and a copy of the Notice to End Tenancy were sent to the Landlord, via registered mail, although she cannot recall the date of service. The Landlord acknowledged receipt of these documents and the Notice to End Tenancy was accepted as evidence for these proceedings.

On January 24, 2019 the Landlord submitted evidence to the Residential Tenancy Branch. The Advocate for the Landlord stated that this evidence was personally served to the Tenant by an agent for the Landlord, although he does not know the date of service. The Landlord submitted no evidence to corroborate this testimony.

The Tenant stated that she did not receive the evidence that was allegedly served to the Tenants.

The Landlord was advised that the evidence she submitted to the Residential Tenancy Branch could not be accepted as evidence for these proceedings as the Tenant did not acknowledge receiving the documents. The Landlord was advised that the hearing would proceed and that she could refer to her documents during the hearing. She was advised that if, at the end of the hearing, she deemed it necessary for me to physically view her documentary evidence, she could request an adjournment for the purposes of re-serving the evidence to the Tenant. At the conclusion of the hearing the Landlord advised that she did not wish an adjournment for the purpose of re-serving evidence.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The parties were advised of their legal obligation to speak the truth during these proceedings.

Issue(s) to be Decided

Should the Notice to End Tenancy for Unpaid Rent be set aside?

Background and Evidence

The Landlord and the Tenant agree the rent, as of January 01, 2019, was \$1,800.00.

The Landlord stated that no rent was paid for January of 2019.

The Tenant initially stated that she has no idea” of how much rent she paid for January of 2019. She subsequently stated that she thinks she paid somewhere between \$400.00 and \$600.00 in rent for January of 2019.

The Advocate for the Landlord stated that a Ten Day Notice to End Tenancy for Unpaid Rent was posted on the door of the rental unit on January 05, 2019. The Tenant stated that this Notice was received on January 05, 2019.

The Landlord and the Tenant agree that the Notice to End Tenancy declared that the Tenants must vacate the unit by January 18, 2019.

The Advocate for the Landlord stated that the Notice to End Tenancy declared that rent of \$1,700.00 was owed for January 01, 2019. He stated that this was an error, as \$1,800.00 was owed for January 01, 2019. The Tenant stated that her copy of the Notice to End Tenancy has been damaged and she cannot read how much rent was owed for January 01, 2019.

Analysis

Section 26(1) of the *Residential Tenancy Act (Act)* stipulates, in part, that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of the rent.

On the basis of the undisputed evidence I find that the Tenants failed to pay all of the rent that was due on January 01, 2019. There is no evidence to that the Tenants had the right to withhold rent for January of 2019.

Section 46(1) of the *Act* stipulates, in part, that a landlord may end a tenancy if the tenant fails to pay rent that is due by serving proper notice to end the tenancy. On the basis of the undisputed evidence I find that the Tenants were served with a Ten Day Notice to End Tenancy for Unpaid Rent, pursuant to section 46 of the *Act*, on January 05, 2019.

As rent for January has not been paid and the Tenants were served with a Ten Day Notice to End Tenancy for Unpaid Rent, I find that the Landlord has the right to end this tenancy pursuant to section 46 of the *Act*. I therefore dismiss the Tenants’ application to set aside the Ten Day Notice to End Tenancy for Unpaid Rent.

Section 55(1) of the *Act* stipulates 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 the landlord's notice to end tenancy complies with section 52 of the *Act* and the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

As the application to set aside the Ten Day Notice to End Tenancy has been dismissed and the Notice to End Tenancy complies with section 52 of the *Act*, I grant the Landlord an Order of Possession, pursuant to section 55(1) of the *Act*.

#### Conclusion

I grant the Landlord an Order of Possession that is effective two days after it is served upon the Tenants. This Order may be served on the Tenants, filed with 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 15, 2019

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Residential Tenancy Branch