



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

CNR CNE LRE OLC MT

### **Introduction**

This hearing was convened in response to an application by the tenant filed February 11, 2019 pursuant to the *Residential Tenancy Act* (the “Act”) primarily to cancel Notices to End Tenancy inclusive of a 1 Month Notice to End for Cause and a 10 Day Notice to End Tenancy for Unpaid Rent pursuant to Section 46 and 47 of the Act. The tenant’s application for more time to make their application was deemed not necessary.

The hearing was conducted by conference call. Both parties attended the hearing and were given opportunity to provide testimony and present evidence. The landlord acknowledged receiving the tenant’s application package. The tenant acknowledged receiving the landlord’s evidence. Both parties acknowledged having copies of both the Notices to End of this matter. The parties were provided opportunity to mutually resolve their dispute to no avail.

### *Preliminary matters*

The *Style of Cause* has been amended to reflect the name of the landlord particulars.

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 primary claim regarding controlling the landlord’s access to the rental unit and ordering the landlord to comply with the Act are not sufficiently related to the tenant’s other primary claims in this matter to warrant they be heard together. The parties were given a priority hearing date in order to address the question of the validity of the Notices to End Tenancy. Therefore, I exercise my discretion to dismiss the tenant’s other claims in this matter, with leave to reapply, if necessary.

### **Issues to be decided**

Should the landlord's 10 Day Notice to End Tenancy be cancelled?

If not, is the landlord entitled to an order of possession?

If neither of the foregoing, should the landlord's 1 Month Notice to End tenancy for Cause be cancelled? If not, is the landlord entitled to an order of possession?

### **Background and Evidence**

The *relevant evidence* in this matter is as follows. It is undisputed that the payable monthly rent is \$1600.00. The tenant agreed that they received the 10 Day Notice to End Tenancy for Unpaid Rent dated February 07, 2019 by registered mail on or about February 11, 2019 stating the tenant owed the rent for February in the amount of \$1600.00. The tenant acknowledged they did not pay the rent because, "the landlord is trying to end my tenancy", referring to the Notice to End Tenancy for Cause also received by the tenant.

It is undisputed that the tenant did not pay the rent for February 2019. It is undisputed that the tenant has further not paid subsequent rent owed for the current month of March 2019. The tenant acknowledged they have not been authorized to withhold rent by an Arbitrator and they have not withheld rent for the cost of emergency repairs. The tenant claims the landlord owes them 2 month's rent for ending their lease however did not provide evidence of this assertion.

### **Analysis**

*The full text of the Act, Regulation, and Residential Tenancy Policy Guidelines can be accessed via the RTB website: [www.gov.bc.ca/landlordtenant](http://www.gov.bc.ca/landlordtenant)*

**Section 46** of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the Notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch.

**Section 26** of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I find that although the tenant filed application for dispute resolution within the time limit prescribed by the Act, I find the tenant has failed to provide proof they paid the outstanding rent or that having not paid it that they have a right under this Act to deduct

all or a portion of the rent. As a result I must **dismiss** the tenant's application to cancel the landlord's Notice to End of this matter.

**Section 55(1)** of the *Act* states that if a tenant applies to dispute a landlord's notice to end tenancy and their Application for Dispute Resolution is dismissed or the landlord's notice is upheld the landlord must be granted an order of possession if the notice complies with all the requirements of **Section 52** of the *Act*.

I find that the Notice issued by the landlord complies with the requirements of Section 52 of the *Act*, accordingly, the landlord is granted an Order of Possession pursuant to Section 55 of the *Act*.

Having determined this matter on the basis of the merits and validity of the 10 Day Notice to End Tenancy, I find it is not necessary for me to ascertain the merits of the 1 Month Notice to End for Cause. Therefore,

**I grant** an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

### **Conclusion**

The tenant's application is dismissed. The landlord is given an order of Possession.

*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: March 11, 2019

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Residential Tenancy Branch