



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 0697418 BC LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on March 7, 2019 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated March 2, 2019 (the "10 Day Notice").

The Tenant as well as the Tenant's Advocate C.W. appeared at the hearing. J.G. appeared as an Agent on behalf of the Landlord. All in attendance provided affirmed testimony.

The Tenant testified that she served her Application and documentary evidence package to the Landlord in person on March 8, 2019. J.G. confirmed receipt. Pursuant to section 88 and 89 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

### Preliminary Matters

J.G. testified that she served the Tenant with her documentary evidence by attaching it to the Tenant's door on April 16, 2019. The Tenant stated that she did not receive the Landlord's evidence.

According to the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure"), 3.16 Respondent's proof of service indicates; at the hearing, the respondent must be prepared to demonstrate to the satisfaction of the arbitrator that each applicant was served with all their evidence as required by the Act and these Rules of Procedure.

Rules of Procedure 3.17 indicates that evidence not provided to the other party in accordance with the *Act*, may or may not be considered during the hearing. I accept that the Tenant did not receive the evidence; therefore the only evidence I will consider from the Landlord is their oral testimony during the hearing.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. 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.

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 complies with the *Act*.

#### Issue(s) to be Decided

1. Is the Tenant entitled to an order cancelling the 10 Day Notice dated March 2, 2019, pursuant to Section 46 of the *Act*?
2. If the Tenant is not successful in cancelling the 10 Day Notice, is the Landlord entitled to an Order of Possession, pursuant to Section 55 of the *Act*?

#### Background and Evidence

The parties agreed that the tenancy began on May 1, 2018. Currently rent in the amount of \$546.00 is due to be paid to the Landlord each month. The Tenant paid a security deposit in the amount of \$262.50 which the Landlord continues to hold. Neither party submitted a copy of the tenancy agreement.

J.G. testified that the Tenant failed to pay rent when due in March 2019. As a result, the Landlord served the Tenant with a 10 Day Notice by posting it to the Tenant's door on March 2, 2019. The 10 Day Notice indicates that the Tenant failed to pay rent in the amount of \$546.00 which was due on March 1, 2019. The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenants had five days to dispute the Notice.

The Tenant confirmed that she received the 10 Day Notice on March 2, 2019 and submitted her Application to cancel the 10 Day Notice on March 7, 2019. During the hearing the parties agreed that after receiving the 10 Day Notice, the Tenant paid the Landlord \$500.00 on March 8, 2019 as well as \$46.00 on March 24, 2019. J.G testified that the Tenant has not yet paid rent for April 2019.

### Analysis

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find;

Section 26 of the Act explains that the 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.

Section 46 of the *Act* states 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 46(4) says that within 5 days after receiving a notice under this section, the tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution.

J.G. testified that she posted the 10 Day Notice on the Tenant's door on March 2, 2019. The Tenant confirmed receipt on March 2, 2019; therefore, I find the 10 Day Notice was sufficiently served pursuant to Section 88 of the *Act*.

Accordingly, pursuant to section 46(4) of the *Act*, the Tenant had until March 7, 2019 to either pay the outstanding rent noted on the 10 Day Notice in full or dispute the 10 Day Notice by filing an application for dispute resolution.

The Tenant made an Application on March 7, 2019, to cancel the 10 Day Notice. I accept that the parties agreed that the Tenant paid \$500.00 of the rent on March 8, 2019 and the remaining \$46.00 portion on March 24, 2019. While the Tenant managed to pay rent owed for March 2019, I find that the late rent payments made to the Landlord took place outside of the 5 day limit outlined in Section 46 of the *Act*. As such, I find that

the Tenant is conclusively presumed to have accepted the end of the tenancy according to the 10 Day Notice.

In light of the above, I dismiss the Tenant's Application to cancel the 10 Day Notice dated March 2, 2019 without leave to reapply.

Under section 55 of the Act, when a tenant's Application to cancel a Notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the landlord an order of possession.

I find that the 10 Day Notice complies with the requirements for form and content and I find that the Landlord is entitled to an order of possession effective 2 (two) days, after service on the Tenant, pursuant to section 55 of the Act. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

### Conclusion

The Tenant has breached the Act by not paying rent when due to the Landlord. The Tenant's Application is dismissed without leave to reapply. The Landlord is granted an order of possession effective 2 days after service on the Tenant. The order should be served as soon as possible and may be filed in the Supreme Court 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: April 29, 2019

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Residential Tenancy Branch