



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") to cancel a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice").

The Tenant and the Landlord appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process.

During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure; however, only the evidence relevant to the issues and findings in this matter are described in this decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had had time to review it prior to the hearing.

### Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the decision would be emailed to both Parties.

### Issue(s) to be Decided

- Should the Notice be cancelled or is it valid?
- Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to an Order of Possession?

### Background and Evidence

Based on the testimony of both Parties, I find that the Tenant was served with a Notice on January 21, 2019.

The Notice informed the Tenant that it would be cancelled if the rent was paid within five days of its receipt. The Notice also explained that the Tenant had five days to dispute the Notice through the Residential Tenancy Branch. The Tenant applied to cancel the Notice, as described above.

The Notice is signed, dated, gives the rental unit address, states the effective date of the Notice, is in the approved form, and states the grounds of the Notice as being rent was owing in the amount of \$26,500.00, as of January 1, 2019. I find that the Notice was in compliance with section 52 of the Act.

The Landlord testified that the monthly rent for the rental unit is \$1,800.00, which is due on the first day of the month. The Parties indicated that the Tenant's mother, the original tenant, may have paid the Landlord a security deposit, but they did not have a record of how much this was. The Parties agreed that the Tenant has made rent payments to the Landlord periodically; however, the Landlord said the Tenant still owes the Landlord approximately \$19,680.00, as of March 31, 2019. The Landlord has not filed an application for their monetary claim, so I make no findings as to the specific amount that is outstanding; however, the Tenant agrees that she owes the Landlord back rent.

### Analysis

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

The Landlord issued a 10 Day Notice to end the Tenancy due to unpaid rent. Section 26 of the Act sets out the rules about payment and non-payment of rent.

**26** (1) 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.

The Tenant disputed the Notice by filing an Application on January 22, 2019, but I find

the Tenant has failed to provide sufficient evidence that she had a right to withhold any amount of rent under the Act, and therefore, I find the Notice to be valid. I dismiss the Tenant's Application and I uphold the Notice that had an effective date of January 31, 2019. I find the tenancy ended on January 31, 2019.

Section 55 of the Act applies and states:

**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.

Pursuant to section 55 of the Act, and taking into account that I find the Notice complies with section 52 of the Act, I must grant the Landlord an order of possession upon having dismissed the Tenant's Application to dispute the Notice or having upheld the Notice. Therefore, I grant the Landlord an order of possession for unpaid rent effective **April 30, 2019** by the Landlord. This order may be filed in the Supreme Court and enforced as an order of that Court.

**Conclusion**

The Tenant's Application to cancel the Notice is dismissed without leave to reapply, as the Tenant had outstanding at the date of the hearing.

I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant. The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

The decision will be emailed to both Parties, as indicated above. The order of possession will be emailed to the Landlord for service on the Tenant.

This decision is final and binding on the parties, except as otherwise provided under the

Act, and 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 17, 2019

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Residential Tenancy Branch