



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes            CNR, LAT, OLC

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- authorization to change the locks to the rental unit pursuant to section 70;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed the tenants served the landlord with the notice of hearing package and part of the submitted documentary evidence in person. The landlord provided testimony that the tenants were served with the submitted documentary evidence via Canada Post Registered Mail on April 5, 2019. The landlord clarified that the evidence package was returned by Canada Post as "Unclaimed" and has provided in her direct testimony the Canada Post Registered Mail Tracking number (noted on the cover of this decision). I accept the testimony of both parties and find that the landlord was sufficiently served as per section 90 of the Act. As for the tenant's partial service of the submitted documentary evidence, I find as the landlord has disputed receiving copies of the text messages and the tenants were unable to provide any proof of service, that this portion of the tenants' documentary evidence is excluded from consideration in this hearing. I also accept the conflicting testimony of both parties regarding the landlord's documentary evidence. A review of the Canada Post Website for online tracking of the package confirms the landlord's details. As such, I find although the tenants did not claim the package, that the tenants are deemed sufficiently served as per section 90 of the Act.

### Preliminary Issue(s)

The tenants clarified that they are only seeking additional time to vacate the rental unit and no longer seek the additional request for an order to change the locks as the landlord and an

order for the landlord to comply with the Act. As such, these portions of the tenants' application were cancelled by the tenants and require no further action.

### Issue(s) to be Decided

Are the tenants entitled to an order cancelling the 10 Day Notice?

### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on May 27, 2018 on a month-to-month basis as per the submitted copy of the signed tenancy agreement dated May 27, 2018. The monthly rent is \$950.00 payable on the 15<sup>th</sup> day of each month. A security deposit of \$480.00 was paid on May 27, 2018.

Both parties confirmed that the tenants were served with a 10 Day Notice to End Tenancy for Unpaid Rent dated March 16, 2019 that was posted to the rental unit door on March 16, 2019. It states that the tenants failed to pay rent of \$475.00 that was due on March 1, 2019.

Extensive discussions with both parties revealed that although the tenancy agreement provides for monthly rent to be paid on the 15<sup>th</sup> day of each month, both parties agreed that the landlord had requested that rent be paid on the 1<sup>st</sup> day of each month. Both parties confirmed that the tenants complied and paid rent from the start of the tenancy by the 1<sup>st</sup> day of each month.

The landlord clarified that an agreement dated March 1, 2019 was made with the tenants to make a partial rent payment of \$475.00 until March 15, 2019, the tenants will look for suitable accommodations, if suitable accommodations were not found by the 15<sup>th</sup>, the tenants would pay the remaining \$475.00 due on March 15, 2019.. The landlord stated that the tenants failed to move out, pay the outstanding \$475.00 and still occupy the rental unit. The landlord stated that on March 16, 2019 the 10 Day Notice was issued and served to the tenants.

The tenants do not dispute the contents of the 10 Day Notice and instead only seek additional time to vacate the premises.

### Analysis

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

In this case, I accept the testimony of both parties and find that the 10 Day Notice dated March 16, 2019 was properly served by posting it to the rental unit door on March 16, 2019. The tenants do not dispute the contents of the notice in that the entire rent of \$950.00 was not paid for March 2019. Both parties confirmed that the tenant only paid \$475.00 for rent for March 2019. As such, I find that the tenants were served with a valid 10 Day Notice dated March 26, 2019 and the tenants' application to cancel the 10 Day Notice is dismissed.

Pursuant to Section 55 the landlord is granted an order of possession to be effective 2 days after upon the tenants being served.

### Conclusion

The landlord is granted an order of possession.

The tenants must be served with this order. Should the tenants fail to comply with the order, the order may be filed in 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: April 29, 2019

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Residential Tenancy Branch