



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

**MNRL OPR-DR  
CNR**

### Introduction

This hearing dealt with applications from both the landlord and the tenant pursuant to the Residential Tenancy *Act* (“*Act*”):

The landlord applied for:

- A monetary order for unpaid rent or utilities pursuant to section 67; and
- An order of possession for unpaid rent pursuant to sections 46 and 55.

The tenant applied for:

- An order to cancel a 10 Day Notice for Unpaid Rent pursuant to section 46.

Both parties attended the hearing. The landlord confirmed she received the tenant’s notice of dispute resolution proceedings but denies she received the tenant’s documentary evidence. The tenant testified she served the materials by Express Post mail on April 16<sup>th</sup> and provided a tracking number to confirm it. The tracking number is recorded on the cover page of this decision. I find the landlord to be deemed served with materials on April 21, 2019, five days after mailing in accordance with sections 88, 89 and 90 of the *Act*.

The tenant confirmed receipt of the landlord’s notice of dispute resolution and evidence. I find the tenant served with the material in accordance with sections 88, 89 and 90 of the *Act*.

While I have turned my mind to all the documentary evidence, including tables, text messages, letters and emails, not all details of the submissions and/or arguments of the parties are reproduced here. The principal aspects of each of the parties’ respective positions were recorded and will be addressed in this decision.

### Issue(s) to be Decided

Should the landlord’s 10 Day Notice for unpaid rent be upheld or cancelled?  
Is the landlord entitled to monetary compensation for unpaid rent?

### Background and Evidence

A copy of the tenancy agreement was filed by the landlord. The tenancy began on April 6, 2017. Rent was set at \$750.00 per month. A security deposit of \$375.00 was collected by the landlord which she still holds.

The landlord provided the following testimony. On or about April 2018, the tenant began to miss rent payments. The landlord provided a table of arrears.

Month	Rent owing	Partial payment	Date of partial payment	Balance of rent owed
2018-04-01	\$750.00	\$150.00	2018-09-01	\$600.00
2018-12-01	\$750.00	\$375.00	2018-11-21	\$375.00
2019-01-01	\$750.00	\$375.00	2018-12-19	\$375.00
2019-02-01	\$750.00	0		\$750.00
2019-03-01	\$750.00	0		\$750.00
2019-04-01	\$750.00	0		\$750.00
Total amount owing to date:				<b>\$3,600.00</b>

The landlord provided evidence of multiple text messages exchanged between the parties show her attempts at collecting rent. The landlord testified rent was either paid late or not paid at all some months.

On April 5, 2019, the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent ("Notice") by registered mail. The tracking number for the mailing is listed on the cover page of this decision. Proof of service of the Notice as well as verification of the tenant's signature on April 5, 2019 was provided as evidence.

The tenant filed for dispute resolution to dispute the landlord's Notice on April 10, 2019, five days after receiving it. The tenant testified she tried to pay the landlord however the landlord refused to accept payment. During the hearing, the tenant testified she did not pay rent for the months shown on the table and is currently unable to pay the arrears. The vacancy rate where she resides is very low and she is finding it difficult to find suitable housing.

### Analysis

I find the tenant deemed served with the 10 Day Notice on April 5, 2019 pursuant to sections 88 and 90 of the Act.

Section 46 of the *Act* states:

(1) 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.

(2) A notice under this section must comply with section 52 [*form and content of notice to end tenancy*].

(3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this *Act* to deduct from rent.

(4) Within 5 days after receiving a notice under this section, the tenant may

- a) pay the overdue rent, in which case the notice has no effect, or
- b) dispute the notice by making an application for dispute resolution.

I have examined the landlord's notice and find that it complies with the form and content provisions of section 52 of the *Act*, which states that the notice must be in writing and must: (a) be signed and dated by the landlord or tenant giving the notice, (b) give the address of the rental unit, (c) state the effective date of the notice, (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and (e) when given by a landlord, be in the approved form.

The tenant testified she did not pay the arrears of rent within 5 days after receiving the Notice. Section 26 of the *Act* is clear, 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.

Based on the testimonies of the parties I find the tenant did not have any right to deduct all or a portion of the rent and failed to pay rent in as shown in the landlord's table in the amount of \$3,600.00, contrary to section 26. As the effective (move-out) date of the Notice has passed, the landlord is entitled to an Order of Possession effective two (2) days after service upon the tenant.

Section 67 of the *Act* states if damage or loss results from a party not complying with this *Act*, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party. In accordance with section 67, the landlord is entitled to a monetary award in the sum of \$3,600.00.

### Conclusion

I find the landlord is entitled to an Order of Possession, effective **two days after service on the tenant**. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$3,600.00**. If the tenant fails to comply with this order, the landlord may file the order in the Provincial Court (Small Claims) and be 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: May 27, 2019

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Residential Tenancy Branch