



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, CNR, LAT, LRE, OLC, RP, RR

### Introduction

This hearing convened as a result of a Tenants' Application for Dispute Resolution wherein the Tenants sought the following relief:

- an order canceling a 10 Day Notice to End Tenancy for Unpaid Rent issued on March 7, 2019 (the "10 Day Notice");
- an order canceling a 1 Month Notice to End Tenancy for Cause issued on March 8, 2019 (the "1 Month Notice");
- an order allowing the Tenant to change the locks on the rental unit;
- an order restricting the Landlord's right to enter the rental unit;
- an order that the Landlord comply with the *Residential Tenancy Act*, the Residential Tenancy Regulation and/or the residential tenancy agreement
- an order that the Landlord make repairs to the rental unit; and,
- an order that the Tenants be authorized to reduce their rent by the cost of repairs or services and facilities required by law.

The hearing of the Tenants' Application was scheduled for teleconference at 9:30 a.m. on May 2, 2019. The hearing did not complete and was adjourned to 9:30 a.m. on June 13, 2019. Both parties called into the hearings and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me. The Tenants were also assisted by an Advocate during both hearings.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

### Preliminary Matters

The parties confirmed their email addresses during the hearing. The parties further confirmed their understanding that this Decision would be emailed to them and that any applicable Orders would be emailed to the appropriate party.

*Residential Tenancy Branch Rule of Procedure 2.3* provides 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.

Hearings before the Residential Tenancy Branch are scheduled on a priority basis. Time sensitive matters such as a tenant's request for emergency repairs or the validity of a notice to end tenancy are given priority over monetary claims.

It is my determination that the priority claims before me are the validity of the 10 Day Notice and the 1 Month Notice. I also find that these claims are not sufficiently related to the balance of the Tenants' claims; accordingly I exercise my discretion and dismiss with leave to reapply the following claims made by the Tenants:

- an order allowing the Tenants to change the locks on the rental unit;
- an order restricting the Landlord's right to enter the rental unit;
- an order that the Landlord comply with the *Residential Tenancy Act*, the Residential Tenancy Regulation and/or the residential tenancy agreement
- an order that the Landlord make repairs to the rental unit; and,
- an order that the Tenants be authorized to reduce their rent by the cost of repairs or services and facilities required by law.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure* and which are relevant to the validity of the 10 Day Notice and the 1 Month Notice.

Although the parties submitted other evidence and gave considerably more testimony on unrelated matters, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the 10 Day Notice and the 1 Month Notice are described in this Decision.

### Issues to be Decided

1. Are the Tenants entitled to an order canceling a 10 Day Notice?
2. Are the Tenants entitled to an order canceling the 1 Month Notice?

### Background and Evidence

*Residential Tenancy Branch Rules of Procedure—Rule 6.6* provides that when a tenant applies to cancel a notice to end tenancy the landlord must present their evidence first as it is the landlord who bears the burden of proving (on a balance of probabilities) the reasons for ending the tenancy. Consequently, even though the Tenants applied for dispute resolution and are the Applicants, the Landlord presented their evidence first.

Introduced in evidence was a copy of the residential tenancy agreement confirming that this tenancy began December 1, 2018. Monthly rent is \$2,950.00 and the Tenants paid \$1,475.00 for a security deposit.

The Landlord testified that the Tenants paid their rent by cash in an envelope. The Landlord stated that it is not his preference to have the Tenants pay this way and for whatever reason the Tenants insisted.

The Landlord stated that the Tenants failed to pay the full rent for March 2019 and as such he issued the 10 Day Notice on March 7, 2019. The Landlord testified that the 10 Day Notice was served by posting it to the rental unit door on March 7, 2019. The Landlord also testified that he sent a text message to the Tenant, B.L., on that date informing her that rent had not been paid as required.

The Landlord stated that on either March 4 or 5, 2019 the Tenants paid \$950.00 of the \$2,950.00 that was owed for March 2019. The Landlord stated that he was informed by his parents as follows. His father went to collect the rent on the 1<sup>st</sup> of the month (as was his regular routine) and the Tenant, B.L., stated that the rent was not ready and that she would drop it off to the Landlord's father's home. The Tenant then dropped off the rent envelope to the Landlord's father and did not say anything. Later the Landlord's mother called the Landlord and informed him that the Tenant only paid \$950.00.

The Landlord stated that on March 5, 2019 at 8:13 p.m. he sent a text message to the Tenant about the \$2,000.00 owing for March. Although copies of other text messages were provided in evidence, the March 5, 2019 exchange was not originally provided in evidence. Pursuant to my Interim Decision the Landlord provided copies of those messages for my consideration. The content of those text messages mirror the parties' testimony in this regard; namely, that the Landlord believed the Tenant did not pay the \$2,000.00 and the Tenant says she did.

A copy of the 1 Month Notice was provided in evidence before me. The following boxes were checked off on the Notice:

<input checked="" type="checkbox"/>	Tenant or a person permitted on the property by the tenant has (check all boxes that apply):
<input type="checkbox"/>	significantly interfered with or unreasonably disturbed another occupant or the landlord.
<input checked="" type="checkbox"/>	seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
<input checked="" type="checkbox"/>	put the landlord's property at significant risk.

The Landlord failed to provide any details in the "Details of Cause" section on the second page of the Notice.

For reasons which will be addressed in my Analysis section of this my Decision, I have not reproduced all of the testimony provided by the parties in terms of the 1 Month Notice.

In terms of the 1 Month Notice, the Landlord testified at the hearing that the reasons for issuing the 1 Month Notice is that the Tenant was using the oven as a heater and was therefore putting the property at risk. He stated that the Tenant complained the furnace did not work, and while the Tenant may have wanted it hotter, it worked. He also stated that his wife dropped off the space heaters to the Tenant in December 2018 such that she did not need to be using the oven as a source of heat.

The Landlord also alleged there was damage to the home. In support he provided photos of the property.

In response to the Landlord's testimony the Tenant testified as follows.

In terms of the 10 Day Notice, the Tenant testified that she paid her March 2019 rent in full. She stated that she paid \$2,000 in cash on March 2, 2019 when the Landlord's father came over to retrieve the rent. The Tenant stated that the bills were all \$50.00's. She also stated that she removed the funds from her bank account on March 2, 2019. In support of her testimony she provided copies of her bank statements which showed a

withdrawal of \$2,000.00 on March 4, 2019. She noted that although the statement indicates the withdrawal occurred on March 4, 2019, that was only because the 2<sup>nd</sup> was on the weekend.

The Tenant further stated that she got \$950.00 in cash from her parents and dropped it off at the Landlord's parent's house.

The Tenant stated that she also paid her December, January and February rent in cash as that was what the Landlord's parents asked her to do. She claimed that the agreement was that they would attend every month during the first week of the month and she would pay cash.

The Tenant admitted that she used the oven to heat the home when the furnace was blowing air, but not heat.

In terms of the photos submitted by the Landlord, the Tenant stated that they were taken when her family was ill with the flu such that she was not able to attend to cleaning as she normally would. She submitted that they showed an untidy and unclean space, but not damage.

In reply the Landlord disputed the Tenants testimony that she took the funds out on March 2<sup>nd</sup>. He noted that the Tenant always paid her rent on the 4<sup>th</sup>, as confirmed by her bank statements.

The Landlord also stated that this is the only Tenant of 300 tenants who pays in cash. The Landlord stated that he was concerned at the outset that she wanted to pay in cash. He said that he no longer accepts cash from her and insists on certified funds; he further confirmed that since the last hearing the Tenant has paid by certified cheque and has paid on time.

### Analysis

After consideration of the testimony and evidence before me I find as follows.

Hearings before the Residential Tenancy Branch are legal proceedings. They are *viva voce* hearings, or oral hearings. They are not chambers applications in Supreme Court where a Chambers Judge, or Master, makes decisions on the affidavit evidence of the parties and submissions of their respective legal counsel. At the Residential Tenancy Branch, participants and witnesses are affirmed to give evidence, and are present

during the hearing to be subject to cross examination. Further, as the hearings are conducted by teleconference a witness does not need to travel to the hearing to participate as they can simply call into the hearing.

The parties dispute whether the Tenant paid \$2,000.00 in rent in March of 2019. There was no dispute about the \$950.00 balance.

The Landlord submits that the Tenant did not pay the \$2,000.00. In this regard, he relies on information he received from his parents. Although he also submitted signed letters from both parents, they were not present at the hearing to give affirmed testimony in this regard.

The Tenant claims she paid \$2,000.00 to the Landlord's father. She gave detailed testimony in this regard, including the denominations of bills provided. She also submitted copies of her banking records which show a corresponding withdrawal of this amount.

While the Landlord strenuously argued that the date on the bank statement indicates the date the funds were removed, the Tenant testified that her bank records and posts weekend banking activity on the Monday following the weekend. Without evidence from the Tenant's bank regarding their practice in this regard, I prefer the Tenant's evidence as to her personal experience with her financial institution and find that she removed the \$2,000.00 on March 2, 2019.

In the case before me, I have the Landlord's indirect evidence as to what his parents told him, and I have the Tenant's direct testimony as to what she says happened. While hearsay is accepted in hearings before the Branch, these out of court statements, such as letters from witnesses and second hand information, are afforded less evidentiary weight than affirmed testimony given during the hearing.

As noted, the Landlord bears the burden of proving the Notice on a balance of probabilities. After consideration of the testimony and evidence before me, I am unable to prefer the Landlord's version of events over the Tenant's with respect to the payment of the March 2019 rent.

Although the Landlord accepted cash payments from this Tenant for some time during the tenancy, he failed to submit in evidence copies of any receipts for these payments.

Further, and as aptly noted by the Tenant's Advocate, the Landlord's parents were not called as witnesses to dispute the Tenant's version of events. They were not present to give affirmed testimony, to answer questions, or to be subject to cross examination. In the circumstances, I afford more evidentiary weight to the Tenant's direct affirmed testimony than the indirect evidence of the Landlord.

I therefore find the Landlord has failed to meet the burden of proving the reasons for ending the tenancy. **The Tenant's application to cancel the 10 Day Notice is granted.**

In terms of the validity of the 1 Month Notice, I find as follows.

Ending a tenancy is a significant request and may only be done in accordance with the *Residential Tenancy Act*. A landlord who seeks to end a tenancy for cause pursuant to section 47 of the *Act* bears the burden of proving the reasons for ending the tenancy. Section 47(3) further provides that a 1 Month Notice must comply with section 52 of the *Act* which in turn provides as follows:

**Form and content of notice to end tenancy**

**52** In order to be effective, a notice to end a tenancy 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 "approved form" as referenced in section 52(e) is #RTB-33 and which can be found online at:

<https://www2.gov.bc.ca/assets/gov/housing-and-tenancy/residential-tenancies/forms/rtb33.pdf>

In the "Details of Cause" section on form #RTB-33, the Landlord is informed that the Notice may be cancelled if details are not described. For clarity, I provide a screen shot of that section:

**DETAILS OF CAUSE(S):** Include any dates, times, people or other information that says who, what, where and when caused the issue. The RTB may cancel the notice if details are not described. Attach separate sheet(s) if necessary (signed and numbered).

In the case before me the Landlord failed to provide any such details and this section was left blank. Although he gave testimony during the hearing that his reasons originate from the Tenants using the oven to heat the rental unit, and the condition in which the property was kept, the Tenants were not provided this information when they were served with the 1 Month Notice as the required section was left blank. As such, the Tenants were not provided with any details or information as to why the Landlord was seeking to end the tenancy, save and except for the general allegations contained in the boxes which were checked off by the Landlord.

One of the Principles of Natural Justice is that a party to a dispute has the right to know the claim against them, the opportunity to review and respond to any evidence which is to be relied upon by the claiming party, and to be present at any hearings dealing with the issues so that they may meaningfully respond to the allegations made against them.

A landlord seeking to end a tenancy for cause, is required to give the tenant details of the cause on the notice to end tenancy so that the tenant knows the reasons the landlord wishes to end their tenancy and is able to meaningfully respond to the specific allegations.

In this case, the Landlord failed to provide any such details. Consequently, I find the 1 Month Notice is ineffective and should be cancelled.

**The Tenant's request to cancel the 1 Month Notice is granted.**

### Conclusion

The Tenants' Application for an Order canceling the 10 Day Notice is granted.

The Tenants' Application for an Order canceling the 1 Month Notice 10 Day Notice is granted.

The tenancy shall continue until ended in accordance with the Act.

The balance of the Tenant's claims are dismissed with leave to reapply.



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: June 20, 2019

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Residential Tenancy Branch