



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding WEST FRASER HOLDING LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPRM-DR, CNR, FF

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties, under the Residential Tenancy Act (the “Act”).

The Tenants’ Application is seeking an order to cancel a 10 Day Notice to End Tenancy for unpaid rent (the “Notice”), an order for the Landlord to comply with the Act or tenancy agreement, and to recover the filing fee for the Application.

The Landlord initially filed a claim under the Direct Request process for an order of possession based on unpaid rent and requested a monetary order for unpaid rent. However, the Tenants had disputed the Notice and these applications were crossed in order to be heard at the same time.

One of the Tenants and two Agents for the Landlord appeared, they gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to question the other party, and make submissions to me.

The Tenants did not submit any evidence but referred to the Landlord’s submitted documentary evidence in the hearing. The Agents referred to portions of their documentary evidence.

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.

### Issue(s) to be Decided

Should the 10 Day Notice to End Tenancy for unpaid rent be cancelled or is it valid?

Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to an Order of Possession and monetary relief?

Has the Landlord breached the Act or tenancy agreement?

### Background and Evidence

This tenancy began on February 8, 2019, for a fixed term of one year. The monthly rent due was \$2,180.00, payable on the first day of the month, and the Tenants paid a security deposit of \$1,090.00. The parties both agreed that the rental unit was in a new building, purpose built for rentals.

Based on the testimony of both parties, I find that the Tenants were served with the 10 Day Notice for non-payment of rent on May 3, 2019, by posting to the door. The Tenant testified they received the Notice on May 6, 2019.

The Notice informed the Tenants that the Notice would be cancelled if the rent was paid within five days. The Notice also explains to the Tenants that they had five days to dispute the Notice. The Tenants applied to cancel the Notice as described above.

The Agent for the landlord "J.B." testified that the Tenants were to pay rent by direct deposit. J.B. testified that the rent was paid late in March and April of 2019. J.B. testified that the Tenants became concerned about the cost of utilities and told her they did not want to pay the rent. The utilities were not included in the rent in the tenancy agreement.

J.B. testified that the rent for May was not paid and they did not get any rent for June either.

The Tenant "M.N." testified that they felt the utility payment was too high and they were concerned about the heat in the unit.

M.N. also testified that they found dead mice in the rental unit, under the fridge. M.N. was concerned about the unhealthy situation with the mice in the rental unit.

M.N. testified that on or about May 13, 2019, the key fobs for the rental unit were deactivated. He asked the Agents for the Landlord about this and he testified that the Agents did not seem to think it was their problem. M.N. testified that the Tenants had to enter the rental unit through a patio door and the fobs were never reactivated. He said they could not access the garbage area without any fobs.

M.N. acknowledged that no rent had been paid for May and he stated the Landlord did not try to take out the June rent through the auto debit system.

The Agent J.B. testified that she had informed the security people that the fobs should be reactivated; however, neither Agent for the Landlord followed up, and apparently the Tenants asked several times about the fobs. J.B. further testified that they did not attempt to take the June rent payment out, as they did not think the Tenants would have the money in their account and had informed the Landlord they were not going to pay rent due to the high utilities and their allegations about mice in the rental unit.

The Tenant testified that the entry fobs are still not working, and they are still accessing the rental unit through the patio door.

### Analysis

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

I find that the Tenants have not paid all the rent due to the Landlord, and therefore, the 10 Day Notice to End Tenancy is valid and should not be cancelled.

Under section 26 of the Act, the Tenants could not withhold rent unless they had an order from the Residential Tenancy Branch allowing them to do so, or, if the Tenants had some other authority under the Act to withhold rent, such as having paid for emergency repairs in accordance with section 33 of the Act. I find the Tenants had no order, nor did they have any authority under the Act to withhold rent from the Landlord.

Therefore, I dismiss the Application of the Tenants to cancel the Notice. However, I do find the Tenants were partially successful with their claim that the Landlord should be ordered to provide them with access to the rental unit.

Under section 30 of the Act, the Landlord is not able to unreasonably restrict access to the rental unit and common areas. I find the Landlord has breached section 30 by deactivating the key fobs of the Tenants.

Therefore, **I order the Landlord** to provide the Tenants access to the rental unit by reactivating the key fobs until the Tenants have completed their move out, under the order of possession I am granting below.

I find the Landlord has proven the Tenants have breached the Act and tenancy agreement by failing to pay rent when due. I find the corrected effective date of the Notice was May 16, 2019, 10 days after the date of service. Having found the Tenants have failed to pay all rent when due, and the effective date of the Notice has past, I find that the Landlord is entitled to an order of possession effective **two days after service**.

This order must be served on the Tenants and may be filed in the Supreme Court and enforced as an order of that Court if the Tenants refuse to move. I note that if the Landlord is required to enforce the order in Supreme Court that the Tenants will be liable for those additional expenses.

Based on the evidence of both parties, I also find that the Landlord has established a total monetary claim of **\$4,360.00**, comprised of rent due for May and June 2019. I do not award the Landlord any late payment fees, as this was not included in their tenancy agreement and they did not produce any evidence of the bank fees they may have been charged for the missed payments.

I order that the Landlord retain the deposit of \$1,090.00 in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$3,270.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Lastly, as both parties have had some success with their applications, I set off their respective filing fees against each other.

This decision is final and binding, subject to any other proceedings 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: June 28, 2019

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Residential Tenancy Branch