



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, DRI, RP, FFT

### 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 of \$1,650.00, dated July 15, 2019 ("10 Day Notice"), for an order to dispute a rent increase, for an order for regular repairs, and to recover the cost of his \$100.00 filing fee.

The Tenant, an agent for the Tenant, W.H. (the "Agent"), 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.

I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"). However, only the evidence relevant to the issues and findings in this matter are described in this decision. At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in 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 and any orders sent to the appropriate Party.

I advised the Parties that Rule 2.3 authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance, the Tenant indicated several matters of dispute on the Application, the most urgent of which is the application to set aside a 10 Day Notice. I find that not all the claims on the Application are sufficiently related to be determined during this proceeding. I, therefore, said I would consider only the Tenant's request to set aside the 10 Day Notice and the recovery of the filing fee at

this proceeding. Therefore, the Tenant's other claims are dismissed without leave to reapply.

Early in the hearing, the Landlord informed me of his legal name, as the Landlord identified on the Application was different than how he identified himself in the hearing and the tenancy agreement. As a result, I have amended the Respondent's name in the Application, pursuant to section 64(3)(c) and Rule 4.2.

The Parties disagreed on whether each had properly served the other with the documents submitted to the RTB. Accordingly, I advised the Parties that they should alert me to any evidence the other person pointed to, but with which they had not been served. I advised the Parties that their testimony in the hearing is also evidence before me for consideration.

#### Issue(s) to be Decided

- Should the 10 Day Notice be confirmed or cancelled?
- Is the Landlord entitled to an order of possession?
- Is the Tenant eligible for recovery of the \$100.00 Application filing fee?

#### Background and Evidence

The Parties agreed that the current, periodic tenancy agreement began on November 16, 2018, with a monthly rent of \$1,650.00, due on the first day of each month; however, they agreed that the Tenant had lived there prior to this date. The Parties agreed that the Tenant did not pay a security deposit or a pet damage deposit.

Based on the Parties' testimony and documentary evidence, including a copy of the 10 Day Notice, I find that the Tenant was served in person with a notice to end tenancy for non-payment of rent on July 15, 2019. Therefore, the effective vacancy date was ten days later, or on July 25, 2019.

The 10 Day Notice informed the Tenant that the notice would be cancelled if the rent was paid within five days of service. The 10 Day Notice also explained that the Tenant had five days to dispute it by applying to have it cancelled. The Tenant had already applied for dispute resolution for the other claims on June 24, 2019, and he amended this Application on July 17, 2019, to include the request for an order to cancel the 10 Day Notice.

In the hearing, the Tenant and the Agent agreed with the Landlord's testimony that the Tenant had not paid full rent to the Landlord in June 2019, and had not paid any rent to the Landlord in July and August 2019.

The Agent said that the Tenant refused to pay rent, because he believed the Landlord had imposed an illegal rent increase. The Agent said that the tenancy agreements shows that the rent went up from \$1,250.00 to \$1,650 in 2018. The Agent said that the Tenant has been unable to pay rent for July and August, because his roommates had moved out.

The Agent also said that the Tenant did not feel obliged to pay rent, because the Landlord failed to make a number of repairs that were needed at the residential property.

### Analysis

Based on the agreed upon documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Rules about payment and non-payment of rent under the Act:

**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.

[emphasis added]

**46** (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]*.

...

(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.

Upon review of the 10 Day Notice, I find it was completed in accordance with the requirements of section 52 of the Act.

Under the legislation, a tenant may dispute a 10 Day Notice for specific reasons, such as they have proof that their rent was paid or that the tenant had the right under the Act to deduct all or a portion from their rent, such as an order from an arbitrator. There is no evidence before me that the Tenant had a right to withhold rent under the Act.

Although the Tenant filed an application for dispute resolution within the time limit permitted under the Act, I find the Tenant's Application had no merit, as the Tenant admitted that rent was not paid within 5 days after receiving the 10 Day Notice. Therefore, I dismiss the Tenant's Application without leave to reapply.

I find that the Landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective **two days** after service on the Tenant.

### Conclusion

Pursuant to section 55 of the Act, 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.

This Decision is final and binding on the Parties, unless 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: August 16, 2019

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Residential Tenancy Branch