



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

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### **Introduction**

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("the *Act*") for cancellation of the landlords' 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46.

Both parties were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The landlord confirmed receipt of the tenant's application for dispute resolution ('application'). In accordance with section 89 of the *Act*, I find that the landlord was duly served with the Application. All parties confirmed receipt of each other's evidentiary materials.

The tenant confirmed that he was personally served with the 10 Day Notice dated July 9, 2019. In accordance with section 88 of the *Act*, I find the tenant duly served with the 10 Day Notice on July 9, 2019.

### **Issues to be Decided**

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

### **Background and Evidence**

The 3 bedroom home was purchased by the landlord in 2004, and originally the tenant resided there with his brother and mother. The tenant's brother moved out, and the mother is now in a care facility. The tenant was paying \$600.00 in monthly rent, but rent has been reduced to \$400.00, which was confirmed by all parties in the hearing.

The landlord issued the 10 Day Notice on July 9, 2019 as the tenant had failed to pay the entire monthly rent. The tenant does not dispute that he had withheld \$90.00 as the landlord had decided to cut off the internet service to the residence. Although the 10 Day Notice indicates \$600.00 as the unpaid rent, both parties confirmed that the rent was set at only \$400.00, and the tenant withheld \$90.00 of that rent.

The tenant, in his application, also made a request that the landlord provide him with receipts for his payments.

### **Analysis**

Section 26 of the Act, in part, states as follows:

#### **Rules about payment and non-payment of rent**

**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.

I have considered the testimony of both parties in the hearing, as well as the evidence submitted for this application. I find it is undisputed that the tenant had decided to deduct \$90.00 from the monthly rent. I find that the tenant did not have permission to withhold or deduct any rent, nor did he have an order from an Arbitrator allowing him to deduct this amount. I find that I find that the tenant has failed to pay the outstanding rent as required by the Act. On this basis, I dismiss the tenant's application to cancel the 10 Day Notice dated July 9, 2019.

Section 55(1) of the Act reads as follows:

**55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

(a) the landlord's notice to end tenancy complies with section 52 *[form and content of notice to end tenancy]*, and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Section 52 of the Act requires that the Notice complies with the Act, specifically, 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) state the grounds for ending the tenancy, and (e) be in the approved form.

Although I find that the amount of outstanding rent to be incorrect on the 10 Day Notice, I find that the 10 Day Notice is still compliant with section 52 of the Act. However, I must still consider the validity of the 10 Day Notice, and whether the landlord had grounds to issue this 10 Day Notice for Unpaid Rent in accordance with section 46 of the Act, which states that "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."

As it was undisputed that the tenant did owe outstanding rent at the time the 10 Day Notice was issued, I find that the 10 Day Notice is still valid despite the incorrect amount indicated on the 10 Day Notice. The tenant's application to dispute this 10 Day Notice does not relieve the tenant from their responsibility to pay the outstanding rent, nor do I find that the tenant was in possession of any previous orders that had allowed them to withhold or deduct this rent. As I find the 10 Day Notice to be valid, and as I find that the 10 Day Notice complies with section 52 of the *Act*, I find that the landlord is entitled to a two (2) day Order of Possession against the tenant, pursuant to section 55 of the *Act*. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

As this tenancy has come to an end, I decline to make any orders requiring the landlord to provide the tenant with any receipts. I do, however, remind the landlord that section 26(2) of the *Act* states that a landlord must provide a tenant with a receipt for rent paid in cash.

### **Conclusion**

I dismiss the tenant's application to cancel the landlord's 10 Day Notice dated July 9, 2019. I find that the landlord's 10 Day Notice is valid and effective as of the effective date on the 10 Day Notice. I, therefore, grant an Order of Possession to the landlord effective two **days after service of this Order** on the tenant. Should the tenant and any occupant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia

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: September 18, 2019

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Residential Tenancy Branch