



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Code          CNC LRE

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on July 19, 2019 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice"); and
- an order suspending or setting conditions on the Landlord's right to enter the rental unit.

The Tenant attended the hearing on his own behalf. The Landlord attended the hearing and was accompanied by A.D. and K.S., witnesses. The Tenant, Landlord, A.D., and K.S. provided a solemn affirmation.

The Tenant testified the Application package was served on the Landlord in person to A.D. on July 19, 2019. A.D. acknowledged receipt on that date. I find the Application package was served on and received by the Landlord on July 19, 2019.

The Landlord submitted documentary evidence in response to the Application. The Landlord testified it was served on the Tenant by registered mail on August 26, 2019. A Canada Post registered mail receipt was submitted into evidence, and the Tenant acknowledged receipt. Pursuant to sections 88 and 90 of the *Act*, documents served by registered mail are deemed to be received 5 days later. I find the Tenant is deemed to have received the Landlord's documentary evidence on August 31, 2019.

No issues were raised with respect to service or receipt of the documents described above during the hearing. The parties were in attendance and were prepared to proceed. The parties were given a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure, and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary and Procedural Matters

Residential Tenancy Branch Rule of Procedure 2.3 permits an arbitrator to exercise discretion to dismiss unrelated claims with or without leave to reapply. The most important issue to address is whether the tenancy will continue. Accordingly, the parties were advised that I would be exercising my discretion to sever the Tenant's request for an order suspending or setting conditions on the Landlord's right to enter the rental unit or site, with leave to reapply. However, considering my findings below, I find the Tenant is not at liberty to reapply for this relief.

### Issue to be Decided

Is the Tenant entitled to an order cancelling the 10 Day Notice?

### Background and Evidence

The parties agreed the tenancy began on November 7, 2015. Subsidized rent in the amount of \$825.00 per month is due on the first day of each month. Rent is paid by a third party. The Tenant paid a security deposit of \$375.00, which the Landlord holds.

The Landlord testified the Tenant did not pay rent when due on June 1 and July 1, 2019. Accordingly, the Landlord issued the 10 Day Notice. At that time, rent in the amount of \$1,650.00 was outstanding. The Tenant confirmed receipt of the 10 Day Notice on July 16, 2019. In addition, the Landlord testified the Tenant did not pay rent when due on August 1 and September 1, 2019, and that \$3,300.000 remains outstanding. The Tenant continues to occupy the rental unit.

In support of the Landlord's evidence, K.S. testified that he is an employee of the agency which provided the subsidy to the Tenant. He testified that the agency determined that the Tenant was no longer eligible to receive the subsidy after May 31, 2019. In a letter dated July 15, 2019, K.S. indicates that the Tenant was advised that subsidy would not be paid after May 31, 2019 and that the Tenant would be responsible for his whole rent.

In reply, the Tenant does not dispute that rent was paid as alleged but testified that an agency paid rent on his behalf. The Tenant testified that the issue arose due to confusion but that the matter of his subsidy has been sorted out with the agency. K.S. confirmed the agency is prepared to pay the subsidy at a new rental address.

### Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 26 of the *Act* confirms a tenant must pay rent when due, whether or not the landlord complies with the *Act*, the regulations or the tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the rent.

In this case, I find that the 10 Day Notice was received by the Tenant on July 16, 2019. Based on the evidence before me, I also find the Tenant's rent subsidy was discontinued after May 31, 2019, and that the Tenant became responsible to pay rent effective June 1, 2019. However, the undisputed evidence before me is that rent has not been paid by the Tenant. Further, I find there is insufficient evidence before me to conclude the Tenant had a right under the *Act* to deduct any rent. Accordingly, I find that the Tenant's Application to cancel the 10 Day Notice is dismissed, without leave to reapply.

When a tenant's application to cancel a notice to end tenancy is dismissed and the notice complies with section 52 of the *Act*, section 55 of the *Act* requires that I grant an order of possession to a landlord. Having reviewed the 10 Day Notice, I find it complied with section 52 of the *Act*. Accordingly, I find the Landlord is entitled to an order of possession, which will be effective two (2) days after it is served on the Tenant.

### Conclusion

The Application is dismissed, without leave to reapply.

By operation of section 55 of the *Act*, I grant the Landlord an order of possession. The order will be effective two (2) days after service on the Tenant. The order may be filed in 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 19, 2019

---

Residential Tenancy Branch