



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, CNR, LAT, OLC, 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 One Month Notice to End Tenancy for Cause dated August 2, 2019 ("One Month Notice");
- to cancel a 10 Day Notice to End the Tenancy for Unpaid Rent dated August 2, 2019 ("10 Day Notice");
- for authorization for the Tenant to change the lock;
- for an order directing the Landlord to comply with the Act, regulation or tenancy agreement; and
- to recover the \$100.00 cost of her Application filing fee.

The Landlord appeared at the teleconference hearing and gave affirmed testimony, but no one attended on behalf of the Tenant. The teleconference phone line remained open for over 30 minutes and was monitored throughout this time. The only person to call into the hearing was the Landlord, who indicated that she was ready to proceed. I confirmed file records, which confirmed that the teleconference codes provided to the Parties were correct and that the only person on the call, besides me, was the Landlord.

During the hearing the Landlord was given the opportunity to provide her evidence orally and to ask and answer questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

The Notice of Hearing documents were emailed to the Tenant on August 21, 2019.

Rule 7.1 states that the dispute resolution hearing will commence at the scheduled time

unless otherwise set by the Arbitrator. The Respondent Landlord and I attended the hearing on time and were ready to proceed, and there was no evidence before me that the Parties had agreed to reschedule or adjourn the matter; accordingly, I commenced the hearing at 9:30 a.m. on Thursday, September 26, 2019, as scheduled.

Rule 7.3 states that if a party or their agent fails to attend the hearing, the Arbitrator may conduct the dispute resolution hearing in the absence of that party or dismiss the application, with or without leave to reapply. The teleconference line remained open for 30 minutes; however, neither the Applicant nor an agent acting on her behalf attended to provide any evidence or testimony for my consideration. As a result, and pursuant to Rule 7.3, I **dismiss the Tenant's Application without leave to reapply.**

### Preliminary and Procedural Matters

The Tenant provided her email address in her Application. The Landlord provided her email address at the outset of the hearing, and confirmed her understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

### Issue(s) to be Decided

- Is the 10 Day Notice valid or should it be cancelled?
- Is the Landlord entitled to an Order of Possession?

### Background and Evidence

The Landlord confirmed the evidence in the tenancy agreement, which indicates that the fixed term tenancy began on January 25, 2019 and was to run to January 31, 2020, with a monthly rent of \$1,325.00, due on the first day of each month. The Landlord said the Tenant was supposed to pay a security deposit of \$662.50 and a pet damage deposit of \$662.50, but that she never paid either of these deposits.

The Landlord said she issued the 10 Day and One Month Notices, because the Tenant owed her \$1,325.00 in unpaid rent for August 2019, and because she was repeatedly late paying her rent in previous months. The Landlord said she served the Tenant with both the 10 Day and One Month Notices by mail on August 2, 2019.

In the hearing, the Landlord said that the Tenant did not pay any rent in August 2019 or September 2019, and never paid a security deposit or pet damage deposit or her part of the utilities.

The 10 Day Notice indicates that it was served via mail on August 2, 2019, and it was signed, dated, had the rental unit address, the grounds of the notice, and an effective vacancy date automatically corrected to August 17, 2019, pursuant to section 53 of the Act.

### Analysis

Section 46 (1) of the Act outlines the grounds on which to issue a 10 Day Notice for non-payment of rent:

#### **Landlord's notice: non-payment of rent**

**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.

. . .

(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.

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
- (b) must vacate the rental unit to which the notice relates by that date.

The Tenant applied for dispute resolution, but she did not attend the hearing to pursue her claim against the Landlord's evidence.

I reviewed all relevant documentary evidence and oral testimony before me and pursuant to sections 88 and 90 of the Act, I find that the Tenant was properly served with the 10 Day Notice on August 7, 2019, five days after it was sent to her by mail.

Section 26 of the Act states that a tenant must pay rent when it is due under the tenancy agreement, 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 the hearing, the Landlord said that she was owed \$1,325.00 in unpaid rent as of August 1, 2019.

Based on the above, I find that the amount of rent outstanding listed on the 10 Day Notice of \$1,325.00 is correct, as it was based on outstanding rent amount for August 2019. However, as there is no monetary claim before me for rent, I must determine whether the 10 Day Notice is valid, not the exact amount of rent outstanding.

The 10 Day Notice was signed, dated, had the rental unit address, the grounds, and the effective vacancy date automatically corrected to August 17, 2019. I find that the 10 Day Notice is in the approved form and is valid, pursuant to section 52 of the Act.

The Tenant did not attend the hearing to provide testimony as to why the rent was not paid, and she did not provide any documentary evidence establishing that she had a right under the Act to deduct all or a portion of the \$1,325.00 in rent owed for August 2019. Therefore, the Tenant's Application to cancel the 10 Day Notice is dismissed without leave to reapply.

Accordingly, I find that the Landlord is entitled to an Order of Possession pursuant to section 55 of the Act. As the effective date of the 10 Day Notice has passed and the undisputed evidence before me is that the Tenant has not paid rent for August or September 2019, the Order of Possession will be effective two days after service of the Order on the Tenant.

### Conclusion

The Tenant did not attend the dispute resolution hearing to assert the merits of her Application. The Tenant has not paid rent for the last two months, so I dismiss her Application without leave to reapply.

Pursuant to section 55 of the Act, I grant the Landlord an Order of Possession 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, it 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: September 26, 2019

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Residential Tenancy Branch