



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR

### Introduction

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

Both parties attended the hearing, accompanied by counsel and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

As both parties were present service of documents was confirmed. The parties each confirmed they were in receipt of the other's materials. While the landlord submitted that they had not been served with the tenant's materials in a manner consistent with the Act, as they confirmed they were in receipt of the materials I find that both parties were sufficiently served in accordance with section 71(2)(c) of the *Act* with the respective materials.

### Issue(s) to be Decided

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

### Background and Evidence

While I have turned my mind to all the documentary evidence and the testimonies of the parties, not all details of the respective submissions and arguments are reproduced. The principal aspects of the claim and my findings around each are set out below.

The tenant began residing on the property in 2015. There was an agreement between the tenant and the previous owner of the property and rent was set at a rate of \$400.00. Title to the rental property transferred from the previous owner to the landlord in 2015. Subsequently, there was a litigation regarding the property between the previous owner and the landlord before the Supreme Court of British Columbia. The litigation resolved on July 25, 2019. The landlord issued a 10 Day Notice dated July 26, 2019 for an arrear amount of \$12,000.00 owing on July 1, 2019.

The landlord submits that the tenant has not made any payment of rent to the landlord and that there is an arrear spanning multiple years. The landlord says that the tenant was aware that the named landlord is the appropriate party to whom payments should have been issued as the tenant gave the landlord's name in their application for rental subsidy.

### Analysis

In accordance with subsection 46(4) of the *Act*, the tenant must either pay the overdue rent or file an application for dispute resolution within five days of receiving a 10 Day Notice. Where a tenant applies to dispute a 10 Day Notice, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the 10 Day Notice is based. In the present case the landlord testified that there was a rent arrear of \$12,000.00 at the time the 10 Day Notice was issued. The tenant disputes that any rent is owing to the landlord.

Based on the totality of the evidence I find that the landlord has not established on a balance that there is a rental arrear of \$12,000.00 or at all. The landlord claims a rental arrear but has provided little evidence of how the arrear is calculated. The landlord submits that they became entitled to rent in the amount of \$400.00 from the date they assumed ownership of the rental property in 2015. I do not find that there is sufficient evidence in support of the landlord's submission. I do not find the application for rental subsidy to be sufficient to find that there was an obligation on the tenant to make monthly payments in the amount of \$400.00 to the landlord.

Furthermore, the landlord provided little submissions on how they reached the arrears figure of \$12,000.00, the equivalent of 30 months' rent. While the landlord submits that

rent became payable upon the transfer of title to the property in 2015 but provided little guidance in which months rent was made and how the total arrears claimed on the 10 Day Notice was calculated.

I find that the landlord has failed to establish that there was an arrear in the amount of \$12,000.00 as at July 26, 2019, the date the 10 Day Notice was issued. As such, I allow the tenant's application to cancel the 10 Day Notice.

### Conclusion

I allow the tenant's application to cancel the 10 Day Notice. This tenancy continues until ended in accordance with the *Act*.

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: October 1, 2019

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Residential Tenancy Branch