



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR

### 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 dated October 16, 2019 ("10 Day Notice").

The Tenant and the Landlords 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. During the hearing the Tenant and the Landlords were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. 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.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to 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.

Issue(s) to be Decided

- Should the 10 Day Notice be cancelled or confirmed?
- Is the Landlord entitled to an order of possession?

Background and Evidence

The Parties agreed that the fixed term tenancy began on June 15, 2016, and ran until June 30, 2017, after which time it became a periodic or month-to-month tenancy. The monthly rent was \$1,250.00, due on the first day of each month. The Parties agreed that the Tenant paid a security deposit of \$625.00 and a pet damage deposit of \$500.00.

The Parties agreed that the Tenant has not paid rent to the Landlords for October or November 2019, but that he continues to occupy the rental unit. The Tenant said that the reason for this is that he was out of work. He said he was looking for employment, but that he had no money coming in, therefore he could not pay rent.

The Landlord said he served the Tenant with the 10 Day Notice by putting it in the mail slot of the rental unit door on October 16, 2019. The 10 Day Notice was signed, dated, had the rental unit address. It stated the ground for the eviction being that the Tenant failed to pay \$1,250.00 rent that was due on October 1, 2019. The 10 Day Notice was deemed received by the Tenant on October 19, 2019, three days after it was left in the mail slot, pursuant to section 90(c) of the Act.

The Tenant said he is now employed and that he would be able to pay back the outstanding rent over time, as well as paying the ongoing rent. He said it would take a little time to get caught up, but now that he is working again, he would like to be able to reimburse the Landlords for what he owes them.

The Landlord said that the Tenant has been a decent tenant and was only behind in rent payments a few times; however, the Landlord said he would like to get an Order of Possession and decide what to do after that.

Analysis

Based on the documentary evidence and the testimony provided during the hearing,

and on the balance of probabilities, I find the following.

Section 26 of the Act states: “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 this Act to deduct all or a portion of the rent.” There is no evidence before me that the Tenant had a right to deduct any portion of the monthly rent due to the Landlord.

Section 46 of the Act authorizes a landlord to end a tenancy for unpaid rent, as follows:

**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]*.

I find that the Landlord had the right under section 46 to give the Tenant notice to end the tenancy for unpaid rent. I find that the 10 Day Notice is consistent with section 52 of the Act.

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.

### Conclusion

The Tenant is unsuccessful in his Application for dispute resolution. He did not have a right under the Act to deduct any rent owing, therefore, the Landlord was at liberty to serve him with a 10 Day Notice.

The 10 Day Notice was consistent with section 52 of the Act as to form and content. The Landlord is granted an order of possession, pursuant to section 55 of the Act.

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: November 26, 2019

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Residential Tenancy Branch