



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PACIFICA HOUSING ADVISORY  
ASSOCIATION and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR, MT, OLC, LAT, LRE

### Introduction

On October 24, 2019, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”) pursuant to Section 46 of the *Residential Tenancy Act* (the “Act”), seeking more time to dispute the Notice pursuant to Section 66 of the *Act*, seeking an Order for the Landlord to comply pursuant to Section 62 of the *Act*, seeking authorization to change the locks pursuant to Section 31 of the *Act*, and seeking to restrict the Landlord’s access pursuant to Section 70 of the *Act*.

The Tenant attended the hearing. C.A. attended the hearing as an agent for the Landlord. All parties provided a solemn affirmation.

The Tenant advised that she served the Notice of Hearing package by registered mail to the Landlord on or around October 29, 2019 and C.A. confirmed that the Landlord received this package on or around November 6, 2019. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord has been served the Notice of Hearing package.

The Tenant advised that she served her evidence to the Landlord on December 1, 2019 by posting it to the door of the office, and then she talked to the building’s janitor on December 3, 2019, who advised that he would let the Landlord know that the evidence was left there. C.A. confirmed that the Landlord received this evidence on December 4, 2019; however, the location that the Tenant left the evidence is not an office for the Landlord but is a janitorial room that is not suitable for service of documents. Even though the Landlord received this evidence, as it was served to a location that was not

appropriate and as it was served late as per Rule 3.14 of the Rules of Procedure, I have excluded the Tenant's evidence and will not consider it when rendering this decision.

C.A. advised that she served the Landlord's evidence to the Tenant on December 2, 2019 by registered mail and the Tenant confirmed receipt of this evidence on December 8, 2019. Based on the undisputed testimony, I am satisfied that service of this evidence complied with the timeframe requirements of Rule 3.15 of the Rules of Procedure. As such, I have accepted all of the Landlord's evidence and will consider it when rendering this decision.

As per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other, and I have the discretion to sever and dismiss unrelated claims. As such, this hearing primarily addressed the Tenant's Application with respect to the Notice and the request for more time, and the other claims were dismissed with leave to reapply. The Tenant is at liberty to apply for any other claims under a new and separate Application.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an Order of Possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

#### Issue(s) to be Decided

- Is the Tenant entitled to have the Landlord's Notice cancelled?
- Is the Tenant entitled to have more time to have the Landlord's Notice cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?

### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on November 1, 2017 and that rent was established at \$845.00 per month, due on the first day of each month. The Landlord submitted into evidence a tenancy agreement confirming the details of the tenancy. A security deposit of \$412.50 was also paid.

C.A. advised that the Notice was served due to rent arrears and insufficient funds charges stemming from missed payments on or before November 2018 only. The amount listed as outstanding on the Notice was \$885.00 and this comprised of the rent of \$10.00 for June 2018, rent of \$825.00 for November 2018, and two insufficient funds charges of \$25.00 each. It also indicated that this amount was due on October 1, 2019 and that the effective end date of the tenancy was October 23, 2019. The Notice was served to the Tenant on October 10, 2019 by being posted to the Tenant's door.

The Tenant acknowledged receiving this Notice on or around October 11, 2019. She stated that she paid rent in the amount of \$845.00 on or around October 19, 2019 and acknowledged that she disputed the Notice on October 24, 2019. She advised that she is on income assistance, and as she has never been through this situation before, she thought that she had 10 days to pay the rent or to dispute the Notice.

C.A. confirmed that the Tenant paid \$845.00 on October 18, 2019.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 26 of the *Act* states that rent must be paid by the Tenant when due according to the tenancy agreement, whether or not the Landlord complies with the tenancy agreement or the *Act*, unless the Tenant has a right to deduct all or a portion of the rent.

Should the Tenant not pay the rent when it is due, Section 46 of the *Act* allows the Landlord to serve a 10 Day Notice to End Tenancy for Unpaid rent. Once this Notice is received, the Tenant would have five days to pay the rent in full or to dispute the Notice. If the Tenant does not do either, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenant must vacate the rental unit.

The undisputed evidence before me is that the Tenant received the Notice on or around October 11, 2019. According to Section 46(4) of the *Act*, the Tenant has 5 days to pay the overdue rent or to dispute this Notice. Section 46(5) of the *Act* states that *“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 is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date.”*

As the Tenant received the Notice on or around October 11, 2019, the Tenant must have paid the rent in full or disputed the Notice on October 16, 2019 at the latest. However, the undisputed evidence is that the Tenant paid October 2019 rent on or around October 18, 2019 and made this Application on October 24, 2019. As the Tenant was late in paying the rent and making this Application, she requested more time to do so.

Pursuant to Section 66 of the *Act*, I have the authority to extend the time frame to dispute the Notice “only in exceptional circumstances.” When the Tenant was questioned if there were any exceptional circumstances that prevented her from disputing the Notice within the required time frame, she stated that she was unaware of the timeframes to pay the rent or to dispute the Notice, despite this information being listed on the Notice itself.

Based on Section 66 of the *Act*, I have the authority to determine whether to consider if the Tenant’s testimony and reasons would constitute exceptional circumstances. I find that the Tenant has provided insufficient evidence of any exceptional circumstances that prevented her from disputing the Notice on time. Ultimately, I am satisfied that the Tenant is conclusively presumed to have accepted the Notice.

However, upon reviewing the Notice to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*, I am not satisfied that the Notice meets all of the requirements of Section 52 because the rent amount the

Landlord requested pertained to rent arrears prior to October 1, 2019. Had the Landlord included past rent arrears and October 2019 rent on the Notice, due October 1, 2019, I would have been satisfied that the Tenant would have been aware of the amount being sought as of service of the Notice. As it was not clear what amount was being sought and for when, I am not satisfied that the Tenant could have understood exactly how much was owed and for what period of time when she was served this Notice.

As I am not satisfied that the Landlord's Notice is valid, I find that the Notice of October 10, 2019, is cancelled and of no force and effect.

### Conclusion

Based on the above, I hereby order that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities of October 10, 2019 to be cancelled and of no force or effect. 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: December 18, 2019

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Residential Tenancy Branch