



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes:

CNR, LRE, OLC, PSF, RR

### Introduction

This hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Rent; for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* or the tenancy agreement; for an Order suspending or setting conditions on the Landlord's right to enter the rental unit; for an Order requiring the Landlord to provide services or facilities; and for a rent reduction.

The Tenant stated that on November 11, 2019, the Dispute Resolution and evidence the Tenant submitted to the Residential Tenancy Branch in November of 2019 were sent to the Landlord, via registered mail. The Landlord acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

On November 29, 2019 the Landlord submitted evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was sent to the Tenant, via email, although he cannot recall the date of service. The Tenant stated that she received an email from the Landlord indicating that he had submitted evidence to the Residential Tenancy Branch, but she did not receive any of the documents submitted by the Landlord. As the Landlord did not serve evidence to the Tenant in accordance with section 88 of the *Residential Tenancy Act (Act)* and the Tenant did not acknowledge receipt of the evidence, the Landlord's evidence was not accepted as evidence for these proceedings.

On December 12, 2019 and December 13, 2019, the Tenant submitted evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was mailed to the Landlord on December 13, 2019. As this evidence was not served in accordance with

the timelines established by the Residential Tenancy Branch Rules of Procedure, it was not accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each party present at the hearing affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

### Preliminary Matter

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the Tenant has identified several issues in dispute on the Application for Dispute Resolution, which are not sufficiently related to be determined during these proceedings.

At these proceedings I will only consider the most urgent issue in dispute, which is the application to set aside a Ten Day Notice to End Tenancy for Unpaid Rent.

The remaining issues in dispute are dismissed, with leave to re-apply.

### Issue(s) to be Decided

Should the Notice to End Tenancy for Unpaid Rent, served pursuant to section 46 of the *Residential Tenancy Act (Act)*, be set aside?

### Background and Evidence

The Landlord and the Tenant agree that:

- the tenancy began on December 01, 2018;
- the Tenant is required to pay \$1,200.00 in rent by the first day of each month;
- the Tenant has only paid \$1,100.00 in rent for November of 2019; and
- the Landlord posted a Ten Day Notice to End Tenancy, dated November 02, 2019, on the door of the rental unit.

The Landlord stated that the Ten Day Notice to End Tenancy, dated November 02, 2019, was posted on the door of the rental unit on November 02, 2019. The Tenant stated that she located the Notice to End Tenancy on her door, on November 02, 2019.

The Tenant stated that she was unable to pay her rent for November because she had to stay in a hotel during the last week of October of 2019, and she used her rent money for that purpose. She stated that she did not make any emergency repairs to the rental unit and she did not have authority from the Residential Tenancy Branch to withhold any of her rent from November.

The Tenant stated that she is not withholding rent for November and that she will pay it as soon as she receives funds from the Provincial Government.

The Landlord and the Tenant agree that the Tenant has not paid all of the rent that is due for December of 2019.

### Analysis

Section 26(1) of the *Residential Tenancy Act (Act)* requires a tenant to pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *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.

A tenant has the right to withhold rent in certain circumstances, pursuant to section 33 of the *Act*, if the tenant has made emergency repairs. A tenant has the right to withhold rent, pursuant to section 72 of the *Act*, if she receives authority from the Residential Tenancy Branch. As the Tenant has submitted no evidence to establish that she had the right to withhold any of the rent due for November of 2019, I find that she remained obligated to pay all of the rent that was due on November 01, 2019.

On the basis of the undisputed evidence, I find that the Tenant did not pay all of the rent that was due on November 01, 2019.

Section 46(1) of the *Act* authorizes a landlord to 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. On the basis of the undisputed evidence, I find that on November 02, 2019 the Tenant received a Ten Day Notice to End Tenancy, which was served pursuant to section 46(1) of the *Act*.

As the Tenant was served with a Ten Day Notice to End Tenancy, served pursuant to section 46(1) of the *Act*, and the rent for November of 2019 has not been paid, in full, I find that the Landlord has the right to end this tenancy pursuant to section 46(1) of the

*Act*. I therefore dismiss the Tenant's application to cancel this Ten Day Notice to End Tenancy.

Section 55(1) of the *Act* stipulates that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if the landlord's notice to end tenancy complies with section 52 of the *Act*, and the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice. As I have dismissed the Tenant's application to cancel this Ten Day Notice to End Tenancy and that Notice complies with section 52 of the *Act*, I must grant the Landlord an Order of Possession.

### Conclusion

I grant the Landlord an Order of Possession that is effective two days after it is served upon the Tenant. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

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 20, 2019

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Residential Tenancy Branch