



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes MT, CNR, FF

### Introduction

On November 6, 2019, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* ("the Act") asking for more time to make an application to cancel a notice to end tenancy, and to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

The matter was set for a conference call hearing. Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue to be Decided

- Should the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities be cancelled?
- Is the Landlord entitled to an order of possession for the rental unit?

### Background and Evidence

The Landlord and Tenant testified that the tenancy began on January 1, 2017. Rent in the amount of \$1,000.00 is to be paid by the first day of each month. The Tenant paid a security deposit in the amount of \$500.00 to the Landlord.

The Landlord testified that she served the Tenant with 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated October 31, 2019. The Landlord posted the 10 Day Notice on the Tenant's door. The Landlord testified that the 10 Day Notice was issued using the proper government form. The Landlord testified that the Tenant failed to pay rent in the amount of \$7,000.00 that is due under the tenancy agreement.

The Tenant testified that he received the 10 Day Notice posted to his door on October 31, 2019. The Tenant did not provide a copy of a 10 Day Notice when he applied to dispute the Notice.

The Landlord testified that the Tenant has been delinquent in paying the rent for many months. The Landlord testified that the Tenant did not pay the rent owing under the tenancy agreement within five days of receiving the 10 Day Notice. The Landlord testified that since the 10 Day Notice was issued, the Landlord has not received any rent payments from the Tenant.

The Tenant was asked to explain why the rent has not been paid. The Tenant testified that he is in a dispute with his former employer regarding his salary/ commission. The Tenant testified that the matter is before the Employment Standards Branch but has not been resolved. The Tenant testified that he started a new job but was laid off in September and has not worked since. The Tenant testified that he feels bad about his inability to pay the rent.

The Tenant confirmed that he did not pay the rent due under the tenancy agreement within five days of receiving the 10 Day Notice.

The Landlord provided a copy of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated October 31, 2019 after the conclusion of the hearing.

### Analysis

Section 26 of the Act provides that a tenant must 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.

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The Tenant received the 10 Day Notice posted to his door on October 31, 2019. I find that the Tenant did not pay the outstanding rent owing under the tenancy agreement within five days of receiving the 10 Day Notice.

I find that the Tenant does not have a legal reason or right under the Act to withhold payment of the rent.

I find that the Tenant has fundamentally breached the tenancy agreement and the Act regarding payment of rent.

The Tenants application to cancel the 10 Day Notice is dismissed. The Tenancy is ending.

Under section 55 of the Act, when a Tenants application to cancel a notice to end tenancy is dismissed and I am satisfied that the notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlord an order of possession.

I find that the 10 Day Notice provided by the Landlord complies with the requirements for form and content. The Landlord is entitled to an order of possession effective two (2) days after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

Conclusion

The Tenant failed to pay the rent owing under the tenancy agreement within five days of receiving a 10 Day Notice. The Tenant did not have a legal right to withhold payment of rent.

The Tenant's Application to cancel the 10 Day Notice dated October 31, 2019 is dismissed.

I grant the Landlord an order of possession effective two (2) days after service on the Tenant. The Tenant must be served with the order of possession. Should the Tenant fail to comply with the order, the order may be filed in 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