



# Dispute Resolution Services

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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 the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed the tenant served the landlord with the notice of hearing package and the submitted documentary evidence in person on November 16, 2019. Both parties also confirmed the landlord served the tenant by posting evidence to the rental unit door on December 7, 2019, although the tenant differed in that he received it from a friend in person on December 14, 2019. Both parties confirmed that they were able to proceed. Neither party raised any service issues.

I accept the undisputed affirmed evidence of both parties and find that both parties have been sufficiently served as per sections 88 and 89 of the Act with the notice of hearing package and the submitted documentary evidence.

At the outset, both parties confirmed that the tenant had incorrectly named the landlord as an individual instead of the numbered company as listed on the 10 Day Notice. Both parties confirmed their consent to amend the tenant's application to accurately reflect that actual landlord instead of the landlord's agent. As such, the tenant's application and all subsequent documents shall reflect the actual landlord's name.

At the conclusion of the hearing the landlord provided his email address for delivery of this decision. The tenant also confirmed that he wished to receive the decision via email to the address provided on his application.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 10 Day Notice?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

Both parties provided undisputed affirmed testimony that although no signed tenancy agreement was submitted that a tenancy existed in which the monthly rent is \$715.00 and was payable on the 1<sup>st</sup> day of each month.

The tenant seeks an order cancelling a 10 Day Notice dated November 5, 2019 which states that the tenant failed to pay rent of \$715.00 that was due on November 1, 2019. The tenant provided written details stating that the tenant was served with the 10 Day Notice on November 5, 2019 posted to the rental unit door.

The landlord confirmed that the 10 Day Notice dated November 5, 2019 was posted to the rental unit door as claimed by the tenant.

The tenant provided undisputed affirmed testimony that he made a partial rent payment of \$375.00 on November 11, 2019. The landlord confirmed partial payment, but also noted that no further rent was paid as of the date of this hearing. The tenant confirmed that no further payments were made. Both parties confirmed that as of the date of this hearing the tenant has not vacated the rental unit

Analysis

Subsection 26(1) of the Act sets out:

A tenant must pay rent when it is due under the tenancy agreement....unless the tenant has a right under this Act to deduct all or a portion of the rent.

The tenant did not provide evidence that he was entitled to deduct amounts from rent or as a result of a prior order from the Residential Tenancy Branch.

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

The landlord testified that the tenant failed to pay rent for all of the rent for November. The tenant admitted that he did not pay all of November's rent. Both parties confirmed in their testimony that the tenant only made a partial rent payment of \$375.00 on November 11, 2019.

As the tenant has failed to pay his rent in full when due, I find that the 10 Day Notice issued November 5, 2019 is valid and dismiss the tenant's application to cancel the 10 Day Notice without leave to reapply. As the tenant's application to cancel the 10 Day Notice is dismissed, the landlord was entitled to possession of the rental unit on November 15, 2019, the effective date of the 10 Day Notice. As this date has now passed, the landlord is entitled to an order of possession effective two days after it is served upon the tenant(s).

### Conclusion

The landlord is granted an order of possession for unpaid rent.

This order must be served upon the tenant by the landlord. 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: January 07, 2020

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Residential Tenancy Branch