



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNR, PSF

### Introduction

On November 13, 2019, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to Section 46 of the *Residential Tenancy Act* (the “Act”) and seeking provision of services or facilities pursuant to Section 62 of the *Act*.

The Landlord attended the hearing; however, the Tenant did not appear during the 38-minute hearing.

This hearing was scheduled to commence via teleconference at 11:00 AM on January 13, 2019.

Rule 7.1 of the Rules of Procedure stipulates that the hearing must commence at the scheduled time unless otherwise decided by the Arbitrator. The Arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

I dialed into the teleconference at 11:00 AM and monitored the teleconference until 11:38 AM. Only the Respondent dialed into the teleconference during this time. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I confirmed during the hearing that the Applicant did not dial in and I also confirmed from the teleconference system that the only party who had called into this teleconference was the Landlord.

As the Tenant did not attend the hearing, I dismiss his Application without leave to reapply.

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*.

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.

#### Issue(s) to be Decided

- Is the Tenant entitled 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.

The Landlord advised that the tenancy started on November 1, 2017. Rent was established at \$700.00 per month, due on the first day of each month. However, he stated that he had an agreement with the Tenant as of December 28, 2018 that rent, including utilities, would be \$900.00 per month and that the Tenant could pay \$450.00 on the first and fifteenth of each month. A security deposit of \$350.00 was also paid.

He advised that the Notice was served to the Tenant by posting it to his door on November 7, 2019 and that \$2,320.00 was outstanding on November 1, 2019. The Notice also indicated that the effective end date of the tenancy was November 17, 2019.

He stated that the Tenant has been in arrears rent for a substantial period of time. As of August 1, 2019, the Tenant owed \$2,050.00. Over the next few months the Tenant made minimal, partial payments. As of November 1, 2019, the Tenant was in arrears of \$2,320.00. The Tenant paid \$500.00 to the Landlord on November 15, 2019 and paid him \$1,000.00 on November 20, 2019. The Landlord issued receipts for use and occupancy only.

#### 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 52 of the *Act* requires that any notice to end tenancy issued by the Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

I have reviewed the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. I am satisfied that the Notice meets all of the requirements of Section 52.

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 was served the Notice by being posted to his door on November 7, 2019. According to Section 46(4) of the *Act*, the Tenant has 5 days, after being deemed to receive the Notice, 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 fifth day fell on Friday November 15, 2019, the Tenant must have paid the rent in full or made his Application to dispute the Notice on this date at the latest. As outlined above, the undisputed evidence is that the rent was not paid in full when it was due, nor was it paid within five days of the Tenant being deemed to have received the Notice. Moreover, while the Tenant disputed the Notice, the Tenant did not attend the hearing

and there is no evidence before me that he had a valid reason for withholding the rent pursuant to the *Act*.

As the Landlord's Notice is valid, as I am satisfied that the Notice was served in accordance with Section 89 of the *Act*, and as the Tenant has not complied with the *Act*, I uphold the Notice and find that the Landlord is entitled to an Order of Possession pursuant to Sections 46 and 55 of the *Act*.

### Conclusion

I dismiss the Tenant's Application for Dispute Resolution without leave to reapply. Furthermore, I grant an Order of Possession to the Landlord effective **two days** after service of this Order on the Tenant. Should the Tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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 14, 2020

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Residential Tenancy Branch