



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FFL, OPRM-DR (Landlord)  
                              CNR, LAT, LRE, OLC (Tenant)

### Introduction

This hearing was convened by way of conference call in response to cross Applications for Dispute Resolution filed by the parties.

The Tenants filed the application December 04, 2019 (the “Tenants’ Application”). The Tenants applied as follows:

- To dispute a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated December 02, 2019 (the “10 Day Notice”);
- For authorization to change the locks to the rental unit;
- To suspend or set conditions on the Landlord's right to enter the rental unit; and
- For an order that the Landlord comply with the Act, regulation and/or the tenancy agreement.

The Landlord filed the application December 13, 2019 (the “Landlord’s Application”). The Landlord applied for an Order of Possession based on the 10 Day Notice, to recover unpaid rent and for reimbursement for the filing fee.

The Landlord appeared at the hearing with the Co-landlord and Counsel. The Tenants appeared at the hearing. I explained the hearing process to the parties who did not have questions when asked. All parties, other than Counsel, provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing packages and evidence.

The Landlord confirmed receipt of the hearing package and evidence for the Tenants' Application.

The Tenants confirmed receipt of the hearing package for the Landlord's Application. The Tenants testified that they did not receive the Landlord's evidence. The Tenants took issue with admissibility of the evidence other than the tenancy agreement, 10 Day Notice and Customer Receipt in relation to service of the 10 Day Notice.

The Landlord testified that the evidence was served on the Tenants. The Landlord pointed to the Customer Receipt for this.

The Landlord has the onus to prove she served the evidence on the Tenants. The Landlord testified that she did. The Tenants testified that she did not. I find no reason to prefer the testimony of the Landlord over the testimony of the Tenants. The Landlord did not submit further evidence to support her testimony. The Customer Receipt does not assist as it does not show what was in the package and the Tenants acknowledged receiving the hearing package. In the circumstances, I am not satisfied the Landlord served the evidence. I heard the parties on whether the evidence should be admitted or excluded if I was not satisfied it was served. I exclude the evidence as I find it would be unfair to the Tenants to admit evidence that they did not know the Landlord was going to rely on at the hearing.

Pursuant to rule 2.3 of the Rules of Procedure (the "Rules"), I advised the Tenants at the outset that I would consider the dispute of the 10 Day Notice and dismiss the remaining requests as they are not sufficiently related to the dispute of the 10 Day Notice. The remaining requests are dismissed with leave to re-apply. This does not extend any time limits set out in the *Residential Tenancy Act* (the "Act").

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all admissible documentary evidence and all oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

#### Issues to be Decided

1. Should the 10 Day Notice be cancelled?
2. Is the Landlord entitled to an Order of Possession based on the 10 Day Notice?

3. Is the Landlord entitled to recover unpaid rent?
4. Is the Landlord entitled to reimbursement for the filing fee?

### Background and Evidence

Both parties submitted written tenancy agreements. The Tenants raised concerns about whether the tenancy agreement submitted by the Landlord is accurate. I have compared the relevant portions of the tenancy agreements submitted and confirmed that they are the same.

The tenancy started November 01, 2019 and is a month-to-month tenancy. The written agreements show rent is \$1,600.00 due on the first day of each month. The agreements state, "\$1400 is the rent and \$200 is the utilities and laundry is not given by the landlord". The parties agreed the Tenants paid a \$700.00 security deposit.

The Landlord sought to keep the security deposit towards unpaid rent.

The 10 Day Notice states the Tenants failed to pay \$1,600.00 in rent due December 01, 2019. It is addressed to the Tenants and refers to the rental unit. It is signed and dated by the Landlord. It has an effective date of December 13, 2019.

The Landlord testified that the 10 Day Notice was served by registered mail December 02, 2019. Tenant J.B. acknowledged receiving both pages of the 10 Day Notice December 03, 2019 by registered mail.

The Landlord and Counsel said the 10 Day Notice reflects unpaid rent for December. The Landlord testified that the Tenants paid November rent but have not paid any rent since. Counsel said the Tenants did not have authority under the *Act*.

The Landlord sought to recover unpaid rent for December and January.

Tenant N.Z. submitted that the rent amount on the 10 Day Notice is not accurate and raised an issue in relation to notices to end tenancy for unpaid rent versus unpaid utilities.

Tenant N.Z. agreed to the following. The Tenants owe the Landlord \$1,600.00 per month, \$1,400.00 for rent and \$200.00 for utilities. The Tenants owe this amount by the first day of each month. The Tenants did not pay December or January rent.

I asked Tenant N.Z. why the Tenants did not pay rent. Tenant N.Z. said the Landlord failed to comply with material terms of the tenancy agreement. I read out the six reasons tenants can withhold rent to the Tenants and asked if any of these six apply. Tenant N.Z. said none of the six reasons apply. Tenant N.Z. then said perhaps the authority to withhold rent based on an arbitrator's order applies. Tenant N.Z. said the Tenants are disputing the 10 Day Notice due to a loss of quiet enjoyment. Tenant N.Z. said the Tenants wanted everything to be complied with and things to be clarified through arbitration.

### Analysis

Section 26(1) of the *Act* states:

26 (1) 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.

Section 46 of the *Act* allows a landlord to end a tenancy when tenants fail to pay rent. The relevant portions of section 46 state:

46 (1) A landlord may 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.

(2) A notice under this section must comply with section 52...

(3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.

(4) Within 5 days after receiving a notice under this section, the tenant may

(a) pay the overdue rent, in which case the notice has no effect, or

(b) dispute the notice by making an application for dispute resolution...

Section 55(1) of the *Act* states:

55 (1) 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

(a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

There are only six reasons tenants can withhold rent:

1. When a landlord collects a security or pet damage deposit that is above the permitted amount (section 19(2) of the *Act*);
2. When section 33 of the *Act* in relation to emergency repairs applies;
3. When the landlord imposes a rent increase that is above the amount allowed by law (section 43(5) of the *Act*);
4. When the landlord issues the tenants a notice to end tenancy under section 49 of the *Act* for landlord's use of property (section 51 of the *Act*);
5. When an arbitrator allows the tenants to withhold rent (section 65(1)(f) of the *Act*); and
6. When the landlord consents to the tenants withholding rent.

I find the written tenancy agreement, whether it be the one submitted by the Landlord or the one submitted by the Tenants, clear. The Tenants are to pay \$1,600.00 in rent by the first day of each month. I find the reference to utilities irrelevant as it is simply a notation about why the rent is \$1,600.00 and the fact that utilities are included in the rent and therefore not an additional cost to the Tenants.

Based on the written tenancy agreements and testimony of the parties, I find the Tenants were required to paid the Landlord \$1,600.00 in rent by the first day of each month.

I note that there are references to the Tenants having reasons to withhold rent in the Tenants' Application that the Tenants did not state or confirm during the hearing. I read out the six reasons tenants can withhold rent and Tenant N.Z. confirmed none of these apply. Counsel for the Landlord submitted that the Tenants did not have authority under the *Act* to withhold rent. I find the Tenants did not have authority under the *Act*, or the Landlord's consent, to withhold rent given the position of the parties.

I note that none of the reasons for withholding rent provided by the Tenants are valid reasons to withhold rent.

First, the rent amount on the 10 Day Notice is accurate and the differences between ending a tenancy due to unpaid rent and unpaid utilities does not apply as the Tenants were to pay \$1,600.00 in rent by the first day of each month as stated in the tenancy agreement.

Second, the Tenants were not permitted to withhold rent because they felt the Landlord had not complied with the *Act* or tenancy agreement as is clear from section 26(1) of the *Act*.

Third, the authority to withhold rent pursuant to an arbitrator's order does not apply as the Tenants did not have an order from an arbitrator stating they could withhold rent for December and January. As explained to Tenant N.Z. at the hearing, in order for this section of the *Act* to apply, the Tenants must have a decision in hand allowing them to withhold a specific amount of rent prior to withholding rent. Tenants cannot withhold rent and later make an Application for Dispute Resolution seeking an order that they were allowed to withhold that rent.

Fourth, the Tenants did not have authority to withhold rent on the basis of a loss of quiet enjoyment. If the Tenants felt their rights were being breached, they were required to pay rent as required, as stated in section 26(1) of the *Act*, and make an Application for Dispute Resolution seeking compensation.

I acknowledge that the Tenants raised issues about locks, the Landlord entering the rental unit and the Landlord failing to comply with the *Act* or tenancy agreement in the Tenants' Application and that these issues were dismissed with leave to re-apply. This is because the Tenants failed to pay rent by December 01, 2019 and therefore were issued the 10 Day Notice. As stated, and as is clear from section 26(1) of the *Act*, the Tenants were not entitled to withhold rent and later submit an Application for Dispute

Resolution raising these issues to justify withholding rent. The Tenants were required to pay rent until an arbitrator permitted them to withhold rent.

Given the above, I find the Tenants did not have authority under the *Act* to withhold rent. I find the Tenants were required to pay the Landlord \$1,600.00 for December rent by December 01, 2019.

Based on the testimony of both parties, I accept that the Tenants did not pay December or January rent.

Given the Tenants did not pay rent as required, the Landlord was entitled to serve them with the 10 Day Notice.

Based on the testimony of both parties, I accept that the Tenants were served with the 10 Day Notice in accordance with section 88(c) of the *Act*. Based on the testimony of J.B. and the Customer Receipt relating to service of the 10 Day Notice, I accept that the Tenants received the 10 Day Notice December 03, 2019.

Upon a review of the 10 Day Notice, I find it complies with section 52 of the *Act* in form and content as required by section 46(2) of the *Act*.

The Tenants had five days from receipt of the 10 Day Notice on December 03, 2019 to pay or dispute it pursuant to section 46(4) of the *Act*.

I find the Tenants did not pay the outstanding rent within five days as the parties agreed the Tenants did not pay any rent for December or January.

The Tenants disputed the 10 Day Notice December 04, 2019, within the five-day time limit. Tenant N.Z. provided the reasons for the dispute. None of them are valid reasons to dispute the 10 Day Notice as explained above. Therefore, I dismiss the Tenants' dispute of the 10 Day Notice.

I also uphold the 10 Day Notice as I find the Landlord had grounds to issue it.

Given I have dismissed the Tenants' dispute of the 10 Day Notice, have upheld the 10 Day Notice and have found the 10 Day Notice complies with section 52 of the *Act*, the Landlord is entitled to an Order of Possession pursuant to section 55(1) of the *Act*. I

issue the Landlord an Order of Possession effective two days after service on the Tenants.

In relation to the unpaid rent, I have found the Tenants failed to pay December and January rent. I have found the Tenants did not have authority under the *Act* to withhold rent. The Landlord is entitled to recover unpaid rent for December and January.

As the Landlord was successful in this application, I award the Landlord reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, the Tenants owe the Landlord \$3,300.00. The Landlord can keep the \$700.00 security deposit towards this amount pursuant to section 72(2) of the *Act*. The Landlord is issued a Monetary Order for the remaining \$2,600.00.

I note that, if the Tenants do not vacate the rental unit in accordance with the Order of Possession, the Landlord can enforce the Order of Possession in the Supreme Court of BC and can seek to recover the costs associated with doing so from the Tenants.

Further, if the Tenants do not vacate the rental unit by the end of January and continue to reside in the rental unit into February, the Landlord can seek unpaid rent for the period that the Tenants overhold pursuant to section 57 of the *Act*.

### Conclusion

The Tenants' dispute of the 10 Day Notice is dismissed without leave to re-apply.

The Landlord is granted an Order of Possession effective two days after service on the Tenants. This Order must be served on the Tenants and, if the Tenants do not comply with this Order, it may be filed and enforced in the BC Supreme Court as an order of that Court.

The Landlord is entitled to monetary compensation in the amount of \$3,300.00. The Landlord can keep the \$700.00 security deposit towards this amount. The Landlord is issued a Monetary Order for the remaining \$2,600.00. This Order must be served on the Tenants and, if the Tenants do not comply with the Order, it may be filed in the BC Provincial Court (Small Claims) 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 *Act*.

Dated: January 29, 2020

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Residential Tenancy Branch