



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute codes      OPR MNR / CNR LRE

### Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

Landlord:

- an order of possession for failure to pay rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67.

Tenant:

- cancellation of the landlord’s 10 Day Notice to End Tenancy for unpaid rent pursuant to section 46 (the 10 Day Notice);
- authorization to change the locks and/or to suspend or set conditions on the landlord’s right to enter the rental unit pursuant to section 70.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide testimony and present evidence.

The landlord confirmed service of the tenant’s application for dispute resolution. No evidence was submitted to the landlord or uploaded to the file by the tenants.

The tenant’s agent submits that the tenants did not receive the landlord’s application.

The landlord’s counsel submits that on January 11, 2020, copies of the Application for Dispute Resolution and Notice of Hearing were sent to both tenants by registered mail and copies were also deposited to the tenants’ mailbox directly. The landlord provided registered mail receipts and tracking numbers in support of service as well as pictures of the package deposited in the mailbox.

Based on the above evidence, I am satisfied that the tenants were served with the Application for Dispute Resolution and Notice of Dispute Resolution Hearing pursuant to sections 89 & 90 of the Act.

#### Preliminary Issue – Adjournment request by tenant's agent

Towards the conclusion of the hearing, the tenant's agent requested an adjournment on the grounds that the tenant had a death in the family preventing her from attending the hearing. The adjournment request was denied as it was not requested until near the conclusion of the hearing and the tenant submitted no supporting documents in regards to the family death.

#### Issues

Is the landlord entitled to an order of possession for unpaid rent or should the 10 Day Notice be cancelled?

Is the landlord entitled to a monetary award for unpaid rent?

Is the tenant's request to restrict access by the landlord warranted?

#### Background and Evidence

The tenancy began on December 1, 2019 with a monthly rent of \$2700.00 payable on the 1<sup>st</sup> day of each month.

The landlord submitted a copy of a 10 Day Notice dated December 2, 2019. The 10 Day Notice indicates an outstanding rent amount of \$2700.00 which was due on December 1, 2019. The 10 Day Notice provides that the tenant had five days from the date of service to pay the outstanding rent in full or apply for Dispute Resolution or the tenancy would end on the stated effective date of the Notice.

The landlord's agent testified that on December 2, 2019 he served the tenant with the 10 Day Notice by posting a copy to the door of the rental premises.

The landlord testified the outstanding rent was not paid within 5 days and no rent has been paid since. The landlord submitted copies of cheques issued by the tenant which were honored by the tenant's bank. The landlord submitted a letter from the tenant's bank indicating that they have no record of such account.

The landlord's monetary claim is for outstanding rent in the amount of \$5400.00. The landlord testified that this includes unpaid rent as per below:

<b>Item</b>	<b>Amount</b>
December 2019	2700.00
January 2020	2700.00
<b>Total Monetary Order Sought</b>	<b>\$5400.00</b>

The tenant's agent acknowledged service of the 10 Day Notice. The tenant's agent submits the rent was paid as far as she knows. The tenant's agent referred to rent receipts, but none were submitted as evidence.

### Analysis

I am satisfied that the tenants received the 10 Day Notice on December 5, 2019, three days after its posting, pursuant to sections 88 & 90 of the Act.

Section 46 of the Act requires that upon receipt of a 10 Day Notice the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the Notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch.

Section 26 of the Act requires 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.

Although the tenants filed an application for dispute resolution within the time limit permitted under the Act, I find the tenants application must be dismissed as the tenants failed to provide sufficient evidence that the rent was paid within 5 days of the 10 Day Notice being received.

Section 55(1) of the *Act* states that if a tenant applies to dispute a landlord's notice to end tenancy and their Application for Dispute Resolution is dismissed or the landlord's notice is upheld the landlord must be granted an order of possession if the notice complies with all the requirements of Section 52 of the *Act*.

I find that the 10 Day Notice issued by the landlord complies with the requirements of Section 52 of the Act, accordingly, the landlord is granted an Order of Possession pursuant to section 55 of the Act.

I find that the tenant was obligated to pay monthly rent in the amount of \$2700.00 but failed to pay rent for the months of December 2019 and January 2020. I accept the landlord's claim for outstanding rent of \$5400.00.

### Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenants fail to comply with this Order; this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to section 67 of the *Act*, I grant the landlord a Monetary Order in the amount of \$5400.00. Should the tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court 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 28, 2020

---

Residential Tenancy Branch