



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** CNR FFL MNRL-S OPR

### **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:

The landlord requested:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72 of the *Act*

The tenant requested:

- cancellation of the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46.

Both parties were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

Both parties confirmed receipt of each other’s applications for dispute resolution hearing package (“Applications”) and evidence. In accordance with sections 88 and 89 of the *Act*, I find that both the landlord and tenant were duly served with each other’s Applications and evidence.

The tenant confirmed receipt of the 10 Day Notice dated December 2, 2019, which was posted on the door. In accordance with sections 88 and 90 of the *Act*, I find the tenant deemed served with the 10 Day Notice on December 5, 2019, 3 days after posting.

**Issue(s) to be Decided**

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession for unpaid rent?

Is the landlord entitled to monetary compensation for unpaid rent?

Is the landlord entitled to recover the filing fee?

**Background and Evidence**

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This fixed-term tenancy began on September 1, 2019, and is to end on February 28, 2020. Monthly rent is set at \$750.00, payable on the first of every month. The tenant paid a security deposit in the amount of \$375.00, which the landlord still holds.

The landlord issued a 10 Day Notice for Unpaid rent on December 2, 2019 as the tenant failed to pay rent for December 2019. It is undisputed by the tenant that he has not paid rent for December 2019 or January 2020.

The tenant testified that he has faced financial hardship and is unable to pay the rent. The tenant also testified that he has been served with a 2 Month Notice by the Landlord for landlord's own use on November 14, 2019, effective January 31, 2020.

**Analysis**

Section 26 of the Act, in part, states as follows:

**Rules about payment and non-payment of rent**

- 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.

I have considered the testimony of both parties in the hearing, as well as the evidence submitted for this application. The tenant failed to pay the December 2019 rent within

five days of being deemed to have received the 10 Day Notice. Although the tenant's testimony is that he had received a 2 Month Notice for Landlord's Use, which would allow the tenant to withhold the last months' free rent as per section 51 (1.1) of the *Act*, the tenant withheld more than one month's rent for this tenancy.

The tenant's application to dispute this 10 Day Notice, nor does the receipt of a 2 Month Notice to End Tenancy, does not relieve the tenant from their responsibility to pay the outstanding rent other than the last month's rent in accordance with section 51(1.1) of the *Act*.

As it was undisputed that the tenant failed to pay the December 2019 rent, within 5 days of receipt of the 10 Day Notice, I dismiss the tenant's application to cancel the 10 Day Notice for Unpaid Rent.

Section 55(1) of the *Act* reads as follows:

- 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.

I find the 10 Day Notice to be valid and complies with section 52 of the *Act*, which requires that the Notice: be in writing and must: (a) be signed and dated by the landlord or tenant giving the notice, (b) give the address of the rental unit, (c) state the effective date of the notice, (d) state the grounds for ending the tenancy, and (e) be in the approved form. I find that the landlord is entitled to a two (2) day Order of Possession against the tenant, pursuant to section 55 of the *Act*. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

The tenant did not dispute the fact that they withheld the entire monthly rent for the months of December and January 2020. I find that the tenant did not have the right under the *Act*, or an order by an Arbitrator to withhold any portion of the rent other than the last month's rent for the 2 Month Notice issued to him. I, therefore, grant the landlord's application for \$750.00 in unpaid rent for December 2019. Section 51(1.1) of the *Act* allows the tenant compensation for the last month's rent. As neither party submitted a copy of this 2 Month Notice into evidence, I am unable to determine whether this 2 Month Notice is valid or not, or whether the tenant is entitled to compensation under the *Act* for the 2 Month Notice. Accordingly, I dismiss the landlord's application for January 2020 rent with leave to reapply.

As the landlord was successful in their claim, I allow the landlord to recover the \$100.00 filing fee for their application.

The landlord continues to hold the tenant's security deposit in the amount of \$375.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's security deposit in partial satisfaction of the monetary claim

### **Conclusion**

I dismiss the tenant's application to cancel the 10 Day Notice dated December 2, 2019.

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

I issue a \$475.00 Monetary Order in favour of the landlord under the following terms, which allows the landlord to recover unpaid rent for December 2019 and the filing fee.

<b>Item</b>	<b>Amount</b>
Unpaid Rent for December 2019	750.00
Recovery of Filing Fee	100.00
Less Security Deposit	-375.00
<b>Total Monetary Order</b>	<b>\$475.00</b>

The tenant must be served with this Order as soon as possible. Should the tenant 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.

I dismiss the remainder of the landlord's monetary claim January 2020 unpaid rent with leave to reapply.

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 29, 2020

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Residential Tenancy Branch