



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding South Island Property Management  
Ltd. and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR, OLC

### Introduction

In this dispute, the tenant sought to cancel a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) pursuant to section 46 of the *Residential Tenancy Act* (the “Act”), and an order that the landlord comply with the Act, the *Residential Tenancy Regulation*, or the tenancy agreement, pursuant to section 62 of the Act.

The tenant applied for dispute resolution on January 13, 2020 and a dispute resolution hearing was held on February 25, 2020. The tenant and two agents for the landlord attended the hearing, and they were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. There were no issues of service related to evidence submitted.

While I have reviewed submitted evidence that met the *Rules of Procedure* and to which I was referred, I have only considered evidence relevant to the issues of this application.

I note that section 55 of the Act requires that when a tenant applies 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’s notice to end tenancy complies with the Act.

### Issues

1. Is the tenant entitled to an order cancelling the Notice?
2. If not, is the landlord entitled to an order of possession?
3. Is the tenant entitled to an order that the landlord comply with the Act, the *Residential Tenancy Regulation*, or the tenancy agreement?

### Background and Evidence

The tenancy commenced on July 24, 2019 and ended on or about February 14, 2020 when the tenant vacated the rental unit. Monthly rent, which was due on the first of the month, was \$1,300.00, and the tenant paid a security deposit of \$650.00. A copy of the written tenancy agreement was submitted into evidence.

The landlord's agent (the "landlord") testified that the tenant did not pay rent for December 2019 and did not pay rent for January 2020. On January 6, 2020, the landlord issued the Notice by posting it on the door of the rental unit. The Notice indicated that the tenant was in arrears in the amount of \$2,600.00 as of January 1, 2020.

The tenant confirmed that he moved out, primarily due to noise from upstairs and because of a fire suppression construction issue. The owner's girlfriend is allegedly so heavy-footed that when she walks "a cup of water would vibrate on the table." The tenant did not have issues with the noise until quite recently. Regarding the fire suppression, the tenant explained that he is in construction and noticed after moving in that the property does not have proper fire suppression. It is the lack of proper fire suppression which has, from what I was able to discern, exacerbated the noise issue.

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

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 the Act, regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or some of the rent. The landlord testified, and provided documentary evidence to support their submission, that the tenant did not pay rent for December 2019 and for January 2020. Nor did the tenant paid any portion of the rent for February 2020. It is important to note that the tenant did not dispute that he failed to pay rent. While the tenant may very well have an issue with noise, this does not give the tenant a legal right to withhold rent.

Section 55 of the Act states that (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 arbitrator, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Having reviewed the Notice, I find that it complies with section 52 (it is in the prescribed form and contains the required information). Further, the tenant has not established any legal basis by which he had the right to not pay rent for December 2019, January 2020, and February 2020. As such, I dismiss the tenant's application and grant the landlord an order of possession.

While the tenant has moved out of the rental unit, the order of possession is issued to ensure that the landlord has full legal right to enter and take possession of the rental unit. It would be in the tenant's interest to return, forthwith, any keys to the rental unit to the landlord, in order to lessen the likelihood of him being liable for costs.

The tenant's application in respect of an order under section 62 of the Act is dismissed without leave to reapply. There is no evidence before me, other than the tenant's disputed testimony, to establish a ground on which such an order should be issued.

### Conclusion

The tenant's application is dismissed without leave to reapply.

I grant the landlord an order of possession, which is to take immediate effect. This order may be filed in, 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 Act.

Dated: February 25, 2020

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Residential Tenancy Branch