



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Aboriginal Housing Society of Prince  
George and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes**

For the Landlord: OPR-DR  
For the Tenant: CNR

### **Introduction**

This hearing dealt with cross applications for Dispute Resolution under the *Residential Tenancy Act* ("Act") by the Parties.

The Landlord filed a claim for: an order of possession for unpaid rent, further to having served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent dated December 11, 2019 ("10 Day Notice"); The Tenant applied for an Order to cancel the 10 Day Notice.

An agent for the Landlord, S.B., ("Agent"), appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Tenant. The teleconference phone line remained open for over 25 minutes and was monitored throughout this time. The only person to call into the hearing was the Agent, who indicated that she was ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only person on the call, besides me, was the Agent.

Rule 7.1 of the Residential Tenancy Branch Rules of Procedure ("Rules") states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. The Agent and I attended the hearing on time and were ready to proceed, and there was no evidence before me that the Parties had agreed to reschedule or adjourn the matter; accordingly, I commenced the hearing at 9:30 a.m. on February 25, 2020, as scheduled.

Rule 7.3 states that if a party or their agent fails to attend the hearing, the Arbitrator may conduct the dispute resolution hearing in the absence of that party or dismiss the

application, with or without leave to reapply. The teleconference line remained open for 28 minutes, however, neither the Tenant nor an agent acting on her behalf attended to provide any evidence or testimony for my consideration. As a result, and pursuant to Rule 7.3, I dismiss the Tenant's Application without leave to reapply.

I explained the hearing process to the Agent and gave her an opportunity to ask questions about the hearing process.

During the hearing the Agent was given the opportunity to provide her evidence orally and respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"). However, only the evidence relevant to the issues and findings in this matter are described in this decision.

As the Tenant did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act states that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Agent testified that she served the Tenant with the Notice of Hearing documents by Canada Post registered mail, sent on January 11, 2020. The Agent provided a Canada Post tracking number, as evidence of service. I find that the Tenant was deemed served with the Notice of Hearing documents in accordance with the Act. I, therefore, admitted the Application and evidentiary documents, and I continued to hear from the Agent in the absence of the Tenant.

### Preliminary and Procedural Matters

The Parties provided their email addresses in their Applications and the Agent confirmed her understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

### Issue(s) to be Decided

- Should the 10 Day Notice be cancelled or confirmed?
- Is the Landlord entitled to an Order of Possession?

### Background and Evidence

The Agent said that the periodic tenancy began on July 1, 2019, with a monthly rent of \$750.00, due on the first day of each month. The Agent said that the Tenant paid a

security deposit of \$375.00, and a pet damage deposit of \$375.00.

In the hearing, the Landlord set out the rent the Tenant has owed and paid leading up to and since the 10 Day Notice was served, as follows:

Date	Amount owing	Amount paid	Amount Outstanding
Nov. 1, 2019	\$750.00	\$0.00	\$750.00
Nov. 27, 2019	\$750.00	\$450.00	\$300.00
Dec. 1, 2019	\$1,050.00	\$0.00	\$1,050.00
Jan 1, 2020	\$1,800.00	\$0.00	\$1,800.00
Jan. 7, 2020	\$1,800.00	\$400.00	\$1,400.00
Feb. 1, 2020	\$2,150.00	\$0.00	\$2,150.00
Feb. 14, 2020	\$2,150.00	\$1,400.00	\$750.00
Feb. 25, 2020		<b>Amount owing</b>	<b>\$750.00</b>

The 10 Day Notice was signed and dated December 11, 2019, and it has the rental unit address. The Agent said she served the Tenant with the 10 Day Notice via registered mail on December 11, 2019, with an effective vacancy date of December 26, 2019.

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 46 (1) of the Act outlines the grounds on which to issue a 10 Day Notice for non-payment of rent:

#### **Landlord's notice: non-payment of rent**

**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.

...

(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.

The Tenant applied for dispute resolution within the five-day deadline of section 46; however, she did not attend the hearing to test her claim against the Landlord's evidence.

I reviewed all relevant documentary evidence and oral testimony before me and pursuant to sections 88 and 90 of the Act, I find that the Tenant was properly served with the 10 Day Notice on December 16, 2019, five days after it was mailed to her. I find that the 10 Day Notice is in the approved form and is valid, pursuant to section 52 of the Act.

The Tenant did not attend the hearing to provide testimony as to why the rent was not paid or whether she had a right under the Act to deduct all or a portion of the \$1,050.00 in rent she owed as of December 1, 2019. I find that the Tenant did not have a right to withhold any of the rent owing to the Landlord in the last three months. As such, the Tenant's Application to cancel the 10 Day Notice has no merit and is dismissed without leave to reapply.

Accordingly, I find that the Landlord is entitled to an Order of Possession pursuant to section 55 of the Act. As the effective date of the 10 Day Notice has passed and the undisputed evidence before me is that the Tenant has not paid full rent for the last four months, the Order of Possession will be effective two days after service of the Order on the Tenant.

### Conclusion

The Tenant did not attend the hearing to substantiate her claim, and she has not paid her full rent for the last four months; therefore, her Application is dismissed without leave to reapply.

The Landlord is successful in their Application, as the Agent proved on a balance of probabilities that the Tenant did not pay her rent in full for the last four months. Therefore, pursuant to section 55 of the Act, I grant the Landlord an Order of Possession effective **two days after service of this Order** on the Tenant. The Landlord is provided with this Order in the above terms and the Tenant must be served with this Order as soon as possible.

Should the Tenant fail to comply with this Order, it may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: February 25, 2020

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Residential Tenancy Branch