



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OLC, CNR, RR, RP, FFT

### Introduction

This reconvened hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("the Notice") pursuant to section 46;
- An order requiring the landlord to comply with the *Act*, regulations, and/or tenancy agreement pursuant to section 62;
- An order requiring the landlord to carry out repairs pursuant to section 33;
- An order to reduce the rent for repairs, services or facilities agreed upon but not provided pursuant to section 65; and
- recovery of the filing fee, pursuant to section 72 of the *Act*.

At the hearing on March 02, 2020 this matter was adjourned to March 20, 2020.

Only landlord KM attended today. At 9:49 A.M. the landlord left the teleconference due to technical difficulties, stating she could not hear me. I left the teleconference line open until 10:00 A.M. and the landlord did not call back.

The landlord confirmed she received the notice of hearing and the evidence (the application) from the tenants. I find the application was served in accordance with sections 88 and 89 of the *Act*.

I note that section 55 of the *Act* requires that when a tenant submits an Application 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 has issued a Notice to end tenancy that is compliant with the *Act*.

### Preliminary Issue – Tenants’ Application

As the tenants did not attend the hearing, I dismiss their application in accordance with Rules of Procedure 7.1, 7.2 and 7.3:

#### **Rule 7 – During the hearing**

##### **7.1 Commencement of the dispute resolution hearing**

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

##### **7.2 Delay in the start of a hearing**

In the event of a delay of a start of a conference call hearing, each party must stay available on the line to commence the hearing for 30 minutes after the time scheduled for the start of the hearing.

In the event of a delay of a face-to-face hearing, unless otherwise advised, the parties must remain available to commence the hearing at the hearing location for 30 minutes after the time scheduled for the start of the hearing.

##### **7.3 Consequences of not attending the hearing**

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 re-apply.

### Issue to be Decided

Is the landlord entitled to an Order of Possession for non-payment of rent, pursuant to section 55?

### Background and Evidence

While I have considered the documentary evidence and the testimony of the landlord, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenant’s claim and my findings are set out below.

The landlord affirmed the tenancy started on August 29, 2016. Rent is \$790.00 per month, due on the first day of the month. At the outset of the tenancy a security deposit of \$347.50 was collected and the landlord still holds it in trust. A copy of the tenancy agreement was submitted into evidence. Tenants HF and MW continue to reside at the rental property. Current arrears are \$3,796.00.

A copy of the Notice was provided. The landlord testified she posted the Notice to the tenants’ door on February 03, 2020. When the Notice was issued the tenants were in arrears for \$4,471.00. The Notice’s effective date is February 13, 2020.

### Analysis

Section 26 of the Act requires that a tenant pay rent when it is due under the tenancy agreement and I accept the uncontested evidence of the landlord that the tenants owed unpaid rent of \$4,471.00 at the time the Notice was served.

I find the tenants were deemed served with the Notice on February 06, 2020 in accordance with section 88(g) and 90 (c) of the Act. I have reviewed the Notice and I find the effective date is incorrect. Pursuant to section 46 (1) of the Act, 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**. Pursuant to section 53(2) of the Act, the effective date is automatically corrected to February 16, 2020. Otherwise, I find the form and content of the Notice complies with section 52 of the Act. The tenants have not successfully disputed the Notice and are conclusively presumed under sections 46(5) of the Act to have accepted that the tenancy ended on the corrected effective date of the Notice, February 16, 2020.

### Conclusion

I dismiss the tenants' application without leave to reapply.

I grant an order of possession to the landlord effective 2 days after service. Should the tenant fail to comply with this order, this order may be filed and enforced as an order of the Supreme Court of British Columbia.

I warn the tenants that they may be liable for any costs the landlord incur to enforce the order of possession.

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: March 24, 2020

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Residential Tenancy Branch