



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPRM-DR, FF, CNR, RP, RR

### Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- an order of possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- an order to the landlord to make repairs to the rental unit pursuant to section 32;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed the landlord served the tenant with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail. Both parties also confirmed the tenant served the landlord with the submitted documentary evidence via Canada Post Registered Mail. Neither party raised any other service issues. I accept the undisputed affirmed evidence of both parties and find that both parties are deemed served as per section 90 of the *Act*.

### Preliminary Issue(s)

At the outset the tenant's application was clarified. The tenant seeks an order cancelling the 10 Day Notice; an order for the landlord to make repairs; and an order authorizing the tenant to reduce rent for repairs agreed upon but not provided. The tenant also filed an amendment to the application seeking an order to cancel a 10 Day Notice on December 23, 2019 and a monetary claim change to \$3,050.00. Discussions with both parties resulted in the tenants' request for repairs and the monetary claim of \$3,050.00 being cancelled by the tenant as they were unrelated to the primary claim by the tenant to cancel the 10 Day Notice. The tenant also clarified that the request to reduce rent was in relation to the 10 Day Notice as the tenant stated that rent was paid in lieu of services. As such, the tenant's request for a reduction in rent was cancelled by the tenant.

The hearing shall proceed only on the landlord's entire application and the tenant's request to cancel the 10 Day Notice dated December 21, 2019.

#### Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to a monetary order for unpaid rent and recovery of the filing fee?

Is the tenant entitled to an order cancelling the 10 Day Notice?

#### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

This tenancy began on September 1, 2019 on a fixed term tenancy ending on August 31, 2020 and then thereafter on a month-to-month basis as per the submitted copy of the signed tenancy agreement dated August 27, 2019. The monthly rent is \$2,200.00 payable on the 1<sup>st</sup> day of each month. A security deposit of \$1,100.00 and a pet damage deposit of \$1,100.00 were paid on September 1, 2019.

The landlord claims that the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated December 21, 2019 via Canada Post Registered Mail on December 21, 2019. The landlord has submitted a copy of a Canada Post Customer Receipt and Tracking label as confirmation.

The 10 Day Notice states that the tenant failed to pay rent of \$2,685.00 that was due on December 1, 2019 and that the tenant failed to pay utilities of \$280.00 after a written notice to do so on November 30, 2019. The 10 Day Notice also sets out an effective end of tenancy date of January 10, 2020.

The landlord seeks an order of possession and a monetary order for \$965.00 in unpaid rent.

The landlord clarified that the \$2,685.00 in unpaid rent consists of:

\$485.00	Unpaid Rent, November 2019
\$2,200.00	Unpaid Rent, December 2019
\$2,685.00	Total
\$280.00	Unpaid Utilities, November 2019
\$2,965.00	Total
-\$2,000.00	Partial Payment, January 9, 2020
-\$1,720.00	Partial Payment, January 9, 2020, Rent
-\$280.00	Partial Payment, January 9, 2020, Utilities
\$965.00	Total Rental Arrears

The landlord has also submitted a copy of a letter from the landlord to the tenant acknowledging receipt of a rent payment via etransfer on January 10, 2020 for \$2,000.00. The letter also states in part, "This is to clarify for you that this money is strictly for USE AND OCCUPANCY of ..." It also details a breakdown of disbursing the payment for "\$280.00 towards utility arrears \$1,720.00 towards USE AND OCCUPANCY... The landlord also submitted copies of a hand written receipt and a hand written letter detailing the acceptance of payment and its disbursement.

The tenant argued that an agreement was made with the landlord for a "payment plan" for rent. The tenant also argued that an agreement for the tenant to make repairs in lieu or rent was made with the landlord.

The tenant stated that a payment plan was agreed to with the landlord on December 7, 2019 to:

\$900.00	Payment to Landlord on December 13, 2019
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\$400.00	Payment to Landlord on December 15, 2019
\$400.00	Payment to Landlord on December 20, 2019
Balance owing	Payment to landlord on December 27, 2019

The landlord argued that no payment plan was made with the tenant. The tenant confirmed that the tenant failed to make any of the listed payments to the landlord.

The tenant stated that a payment of \$2,000.00 was made to the landlord on January 17, 2020.

The tenant argued that she did not receive a copy of the notice for “use and occupancy only” from the landlord.

### Analysis

Pursuant to section 46 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 tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

In this case, I accept the undisputed evidence of both parties that the landlord served the tenant with the 10 Day Notice dated December 21, 2019. The tenant confirmed receipt of the package on December 23, 2019 posted to the rental unit door as per her application for dispute. The tenant confirmed that rental arrears were owed as per the 10 Day Notice.

I find on a balance of probabilities that the tenant has failed to provide sufficient evidence of an agreement of the tenant’s services in lieu of rent payment. During the entire hearing, the tenant failed to provide sufficient evidence of such an agreement.

On the tenant’s claim that a payment plan was made to pay for rental arrears, I find that the tenant failed to provide sufficient evidence that such an agreement was made as the landlord provided direct testimony arguing that no such agreement was made. In fact the tenant provided direct testimony that none of the 4 payments she stated were agreed upon were paid by the tenant.

On this basis, I find that the landlord has provided sufficient evidence that the 10 Day Notice dated December 21, 2019 was properly served and that the form and contents were undisputed by the tenant. The tenant’s application to cancel the 10 Day Notice

dated December 21, 2019 is dismissed without leave to reapply. The landlord is granted an order of possession to be effective 2 days after it is served upon the tenant.

As for the monetary claim of \$965.00 by the landlord, I find that sufficient evidence has been provided by the landlord that there are rental arrears. I also note that the tenant confirmed in her direct testimony that at no time has any payments been made except for the noted \$2,000.00.

On the issue of “use and occupancy only” notice by the landlord, I find on a balance of probabilities that I prefer the evidence of the landlord over that of the tenant. The landlord provided clear and concise evidence of service that the notice was sent via regular mail and has submitted a copy into evidence in confirmation. The tenant has repeatedly provided conflicting and contradictory evidence throughout the hearing. As such, I find that the landlord has been successful in establishing a claim for \$965.00.

The landlord having been successful is also entitled to recovery of the \$100.00 filing fee.

### Conclusion

The landlord is granted an order of possession.

The landlord is granted a monetary order for \$1,065.00.

These orders must be served upon the tenant. Should the tenant fail to comply with these orders, the orders may be filed in the Supreme Court of British Columbia and the Small Claims Division of the Provincial Court of British Columbia and enforced as orders of those courts.

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 13, 2020

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Residential Tenancy Branch