



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNR, MT

### Introduction

In this dispute, the tenant sought to cancel two 10 Day Notices to End Tenancy for Unpaid Rent (the “notices”) under section 46 of the *Residential Tenancy Act* (the “Act”), and, more time to apply to cancel the notices, under section 66 of the Act.

The tenant applied for dispute resolution on February 11, 2020 and a dispute resolution hearing was held on March 12, 2020. The tenant and 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. No issues of service were raised by the parties.

As a preliminary matter, I note that the first of the notices was served on, and received by, the tenant on February 5, 2020. She filed for dispute resolution on February 11, 2020, one day outside the five days required under the Act. I see no prejudice arising from accepting the tenant’s application one day after the deadline, and grant her request for more time in which to dispute the first of the notices.

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

Finally, 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 either, or both, of the notices?
2. If no, is the landlord entitled to an order of possession.

### Background and Evidence

The tenancy began on February 1, 2020, and monthly rent is \$1,100.00, due on the first of the month. The tenant was to pay a security deposit of \$550.00. On the written tenancy agreement, a copy of which was submitted into evidence, there appears only the name of the tenant and the name of one landlord. As such, I have amended the style of cause (that is, the “cover page” to this decision) to reflect that there is only one landlord subject to this dispute.

On February 1, 2020, the landlord received \$1,050.00 of the rent, but on February 5, 2020 issued the first 10 Day Notice to End Tenancy for Unpaid Rent in the amount of \$340.00, which represented an unpaid portion of rent in the amount of \$50.00 plus \$290.00 that was owing for a security deposit. This notice was served on the tenant by way of it being left with an adult who apparently resided with the tenant, as is permitted under section 88(e) of the Act. The landlord also provided a copy (or, photograph) of the notice to the tenant by way of text message, which the tenant acknowledges receiving on February 5.

There was some dispute between the parties about whether the tenant had actually paid the full rent. The tenant argued that there was a termination of services (laundry) notice given to her by the landlord, which resulted in a \$50.00 reduction in rent. This notice was provided on February 5, 2020.

Not long after, on March 2, 2020, the landlord issued a second 10 Day Notice to End Tenancy for Unpaid Rent, a copy of which was submitted into evidence by the landlord and which the tenant acknowledged receiving on or about March 2. The second notice indicated that rent in the amount of \$1,150.00 was due on March 1, 2020. This notice was also left with an adult who appeared to be residing with the tenant. It was also taped to the door of the rental unit, in accordance with the Act.

Regarding this second notice, the tenant admitted and acknowledged that she has not paid for March 2020. She has had difficulty with the bank, and is experiencing difficult financial and mental issues, along with the challenges of raising young children.

Both parties provided testimony about various other issues, including the cut off of power and laundry services. However, as those issues are not relevant to the circumstances regarding unpaid rent, I will not reproduce or reference this further.

### 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. As explained to the parties at the start of the hearing, where a tenant disputes a notice to end a tenancy, the onus shifts to the landlord to prove that they had a valid ground to end the tenancy.

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. Pursuant to section 46 of the Act, which allows a landlord to end a tenancy where the tenant has not paid rent, the second notice informed the tenant that the notice would be cancelled if they paid rent within five days of service, or, if they filed for dispute resolution. In this case, the notice is simply added to this existing dispute, and I shall address this notice.

The landlord testified that the tenant has not paid rent for March 2020. To this, the tenant acknowledged and confirmed that she has not paid rent for March 2020. It now twelve days into the month and there is no evidence that she has done so. There is no evidence before me that the Tenants had a right under the Act to deduct some or all of the rent. Indeed, even if there is a reduction in rent in the amount of \$50.00, which there very well might be, that would leave \$1,100.00 in rent that has not been paid.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of establishing that he had a valid legal ground to end the tenancy under sections 26 and 46(1) of the Act.

As the landlord has met their onus of proving the ground on which they issued the second notice, I need not consider the first notice. I dismiss the tenant's application for an order cancelling the notices, without leave to reapply. The 10 Day Notice to End Tenancy for Unpaid Rent served on March 2, 2020, is hereby upheld.

Section 52 of the Act requires that any notice to end tenancy issued by a landlord must be signed and dated by the landlord; give the address of the rental unit; state the effective date of the notice, state the grounds for ending the tenancy; and be in the approved form. I find the second notice complies with the requirements set out in section 52.

Section 55(1) of the Act states that if a tenant applies to dispute a landlord's notice to end tenancy and their Application for Dispute Resolution is dismissed or the landlord's notice is upheld the landlord must be granted an order of possession if the notice complies with all the requirements of section 52 of the Act. An order of possession is thus issued.

### Conclusion

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

I grant the landlord an order of possession, which must be served on the tenant and is effective two days from the date of service. 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: March 12, 2020

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Residential Tenancy Branch