



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Interlink Realty  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR

### Introduction

This hearing convened as a result of the tenant's application for dispute resolution under the Residential Tenancy Act (Act) for:

- an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (Notice) issued by the landlord.

The tenant and the landlord's agent (landlord) attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

Thereafter the participants were provided the opportunity to present their affirmed evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

### *Preliminary Issue –*

The tenant did not submit evidence to support her application, more particularly, a copy of the Notice that she requested that I cancel.

The landlord submitted evidence the day before the hearing.

I find the landlord's evidence was submitted late and did not comply with the time requirements laid out in the Rules; however, included in the landlord's evidence was a copy of the Notice.

I elected to accept the landlord's evidence of the Notice, as both parties acknowledged the information on the Notice and the tenant failed to submit a copy.

### Issue(s) to be Decided

Is the tenant entitled to an order cancelling the Notice?

### Background and Evidence

The tenant submitted that she is not a tenant as her name is not on the written tenancy agreement. In response to my inquiry, the tenant said that she is the daughter of the tenant listed on the tenancy agreement and that her mother is now and has been in a long-term care facility for eight months. The tenant said she does not know if her mother will ever return to the rental unit.

In response to my inquiry, the tenant said she is more of a "gypsy" and lives in and out of the rental unit.

I also inquired of the landlord, who represents the named corporate landlord, about her status. The name of the corporate landlord on the written tenancy agreement is not the same as the landlord listed in this matter.

The landlord said the landlord named in the application took over management of this tenancy in 2000.

The written tenancy agreement shows that the tenancy between the tenant's mother, AC, and the original landlord began on November 1, 1991, beginning monthly rent was \$850 due on the first day of the month, and the tenant paid a security deposit of \$425.

Pursuant to the Rules, the landlord proceeded first in the hearing to explain and support their Notice.

The landlord submitted that she served the tenant the Notice on February 16, 2020, by handing the Notice to the tenant. The Notice listed unpaid rent of \$5,557.48 owed as of

February 1, 2020. The effective move-out date listed an unspecified day in February, 2020. The Notice listed AC and the tenant as tenants.

The landlord asserted that since the issuance of the Notice, the tenant has not paid any rent.

The landlord also submitted that the only person she had dealt with regarding this tenancy is the tenant here and was not aware that AC had not been living in the rental unit.

*Tenant's response-*

In response, the tenant confirmed that she has not paid any rent since receiving the Notice.

The tenant questioned why the hearing proceeded at all, as she read that all court hearings and evictions had been suspended during the current pandemic crisis.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

I have reviewed the Notice and find it complies with section 52 *[form and content of notice to end tenancy]*.

As the tenant suggested she is not a tenant as her name did not appear on the written tenancy agreement, I find it necessary to determine whether the applicant here is a tenant. I find that she is.

The undisputed evidence is that the tenant's mother, the originally named tenant, has been moved from the rental unit, leaving the tenant residing there.

The Act states that one way a tenancy ends is when a tenant abandons the rental unit.

In this case, I find the original tenant, AC, has abandoned the rental unit and the applicant, CC, is now the tenant, by way of her occupancy of the rental unit. I accept the undisputed evidence of the landlord that CC has been paying the monthly rent, when it was paid.

The Act defines a tenancy agreement as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

I therefore find that the tenant here has assumed the tenancy by way of an oral contract and is responsible for the obligations of a tenant under the Act, which includes paying the monthly rent.

The landlord submitted without dispute that she served the tenant the Notice by personal service on February 16, 2020.

The Notice did not list an effective move-out date, in other words, the landlord only listed an unknown day in February 2020.

Section 53 of the Act allows the effective date of a Notice to be changed to the earliest date upon which the Notice complies with the Act; therefore, I find that the listed effective date on the Notice is changed to February 26, 2020, 10 days after it was served on the tenant.

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement, whether or not the landlord complies with the Act, and is not permitted to withhold rent without the legal right to do so. A legal right may include the landlord's consent for deduction; authorization from an Arbitrator or expenditures incurred to make an "emergency repair", as defined by the Act.

Pursuant to section 46(1) of the Act, when a tenant fails to pay rent when due, the landlord may serve the tenant with a 10 Day Notice for Unpaid Rent or Utilities. Upon receipt of the Notice, the tenant must pay the outstanding rent listed or file an application in dispute of the Notice within five (5) days. As the tenant filed her dispute of the Notice on February 20, 2020, I find that she applied within the required time limit.

When a Notice is disputed, the tenant must be able to demonstrate that they did not owe the landlord rent or had some other legal right to withhold rent.

Upon hearing from the parties, I find that the tenant owed the landlord rent when the Notice was issued and that she did not pay all or any of the rent owed to the landlord within five days of receiving the Notice.

I therefore find the landlord submitted sufficient evidence to support the Notice. As such, I find the tenancy has ended for the tenant's failure to pay rent and the landlord is entitled to regain possession of the rental unit.

I therefore dismiss the tenant's application seeking cancellation of the Notice.

As such, I find that the landlord is entitled to and I therefore grant them an order of possession for the rental unit effective 2 days after service upon the tenant, pursuant to section 55(1)(b) of the Act. The order of possession is included with the landlord's Decision. Should the tenant fail to vacate the rental unit pursuant to the terms of the order after it has been served upon them, this order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court.

The tenant is advised that costs of such enforcement, such as bailiff fees, are recoverable from the tenant.

**Although I have ordered the tenancy will end pursuant to section 46 and 55(1)(b) of the Act, *Ministerial Order M089* issued March 30, 2020, pursuant to the State of Emergency declared on March 18, 2020, prohibits the enforcement of certain Residential Tenancy Branch orders made during the state of emergency. Enforcement of other Residential Tenancy Branch orders may be affected by the suspension of regular court operations of the BC Supreme Court and Provincial Court.**

I advise the tenant of the following taken from the Residential Tenancy Branch (RTB) website:

**Tenants should pay rent wherever possible. The legislation still requires that tenants pay rent in full and on time.**

- **The state of emergency temporarily suspends a landlord's ability to end a tenancy if a tenant does not pay the rent in full and on time**
- **A tenant who has not paid rent could face eviction once the state of emergency is over.**

### Conclusion

The tenant's application is dismissed, without leave to reapply, due to her failure to pay the monthly rent when due.

The landlord has been issued an order of possession for the rental unit, effective 2 days after it has been served on the tenant.

The order of possession of the rental unit will become enforceable as noted above.

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: April 21, 2020

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Residential Tenancy Branch