



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNR, OLC, MNDCT, FFT

### Introduction

On March 13, 2020, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) pursuant to Section 46 of the *Residential Tenancy Act* (the “Act”), seeking an Order to comply pursuant to Section 62 of the *Act*, seeking a Monetary Order for Compensation pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenant and the Landlord both attended the hearing. All in attendance provided a solemn affirmation.

The Tenant advised that her husband served the Landlord with the Notice of Hearing and evidence package by hand on or around March 24, 2020 and the Landlord confirmed that he received this package. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served the Notice of Hearing and evidence package.

The Landlord advised that he did not submit and evidence for consideration on this file.

During the hearing, I advised the Tenant that as per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other and that I have the discretion to sever and dismiss unrelated claims. As such, I advised the Tenant that this hearing would primarily address the Landlord’s 10 Day Notice to End Tenancy for Unpaid Rent, that her other claims would be dismissed, and that she is at liberty to apply for these claims under a new and separate Application.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me;

however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

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 complies with the *Act*.

#### Issue(s) to be Decided

- Are the Tenants entitled to have the Landlord's Notice cancelled?
- If the Tenants are unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Are the Tenants entitled to recover the filing fee?

#### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on or around November 4, 2018 under an unwritten, month to month tenancy. They agreed that the rent was owed in the amount of \$1,000.00 per month and that it was due on the first day of each month. The Landlord stated that there was no security deposit paid; however, the Tenant stated that a security deposit of \$500.00 was paid.

The Landlord advised that the Notice was served to the Tenant by hand on March 9, 2020 and the Tenant confirmed that she received the Notice on this date. He stated that \$900.00 was outstanding on March 1, 2020 as the Tenant was in arrears for half of March 2020 rent and \$400.00 that was outstanding from September 2019. He stated that the Tenant had a dispute over appliances in September 2019, and she arbitrarily deducted \$400.00 from September 2019 rent without any authorization from him. He stated that he advised her he would compensate her \$225.00 for the cost of a fridge if she provided a receipt; however, he did not have any agreement with her that she would not have to pay the \$400.00 that she withheld. He also stated that the Tenant did pay \$500.00 on March 20, 2020 and \$1,000.00 for April 2020 rent; however, the

\$400.00 from September 2019 is still in arrears. The effective end date of the tenancy on the Notice was noted as March 19, 2020.

The Tenant advised that there was an issue with certain appliances in September 2019 and that she decided that she would not pay \$400.00 of September 2019 rent over this dispute. She confirmed that she did not have written authorization from the Landlord to withhold this amount from rent. Many times during the hearing, the Tenant attempted to bring the issue of utilities into consideration; however, the Tenant was reminded that all issues not related to the non-payment of rent issue were severed from this hearing.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

In considering this matter, I have reviewed the Landlord's Notice to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. In reviewing this Notice, I am satisfied that the Notice meets all of the requirements of Section 52.

Section 26 of the *Act* states that rent must be paid by the Tenants when due according to the tenancy agreement, whether or not the Landlord complies with the tenancy agreement or the *Act*, unless the Tenants have a right to deduct all or a portion of the rent.

The consistent evidence before me is that the Tenants received the Notice on March 9, 2020. According to Section 46(4) of the *Act*, the Tenants have 5 days, after being served the Notice, to pay the overdue rent or to dispute this Notice. Section 46(5) of the *Act* states that *"If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date."*

As the fifth day fell on Saturday March 14, 2020, the Tenants must have paid the rent in full by this date at the latest or made this Application to dispute the Notice on March 16, 2020 at the latest. The undisputed evidence is that the Tenants did not pay the rent in

full by March 14, 2020 and while they disputed the Notice in time, they did not have a valid reason under the *Act* for withholding the rent.

Attempts were made during the hearing to explain to the Tenant that despite her disagreement with the Landlord over an appliance issue, she did not have the authority to make her own decision to withhold the rent. However, the Tenant was combative, argumentative, and would continuously interrupt during the hearing, for which she was cautioned about but this behaviour continued. Attempts were also made to settle these matters and to engage in a healthier tenancy moving forward, but the Tenant's behaviour did not lead to any meaningful discussions.

As the Landlord's Notice is valid, as I am satisfied that the Notice was served in accordance with Section 88 of the *Act*, and as the Tenants had not complied with the *Act*, I uphold the Notice and find that the Landlord is entitled to an Order of Possession pursuant to Sections 46 and 55 of the *Act*.

As the Tenants were not successful in this application, I find that the Tenants are not entitled to recover the \$100.00 filing fee paid for this Application.

### Conclusion

The Landlord is provided with a formal copy of an Order of Possession effective **two days after service of this Order** on the Tenants. Should the Tenants or any occupant on the premises fail to comply with this Order, this Order may be filed 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 *Residential Tenancy Act*.

Dated: April 23, 2020

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Residential Tenancy Branch