



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes: CNR, CNC, OLC, MNDCT, PSF, FFT

### Introduction

In this dispute, the tenant sought the following relief under the *Residential Tenancy Act* (the “Act”):

1. an order cancelling a One Month Notice to End Tenancy for Cause (the “One Month Notice”), pursuant to section 47 of the Act;
2. an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent (the “10 Day Notice”), pursuant to section 46 of the Act;
3. an order for the landlord to comply with the Act, pursuant to section 62 of the Act;
4. an order for the landlord to provide services as required by section 62 of the Act;
5. compensation under section 67 of the Act; and,
6. recovery of the filing fee, pursuant to section 72 of the Act.

The tenant applied for dispute resolution on February 18, 2020 and a dispute resolution hearing was held, by way of telephone conference, on April 27, 2020. The tenant, the landlord, and the tenant’s advocate attended the hearing, were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. Both parties acknowledged the exchange of evidence and no issues of serve were raised.

I have only considered evidence submitted in compliance with the *Rules of Procedure*, to which I was referred, and which was relevant to the issues of this application. As such, not all of the parties’ testimony may necessarily be reproduced below.

It should be noted 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.

### Preliminary Issue: Dismissal of Claims Unrelated to the Notice

Rule 2.3 of the *Rules of Procedure*, under the Act, states that claims made in an application must be related to each other. It further states that an arbitrator may use their discretion to dismiss unrelated claims with or without leave to reapply.

Having reviewed the tenant's application, I find that the claims other than the application to dispute both notices are unrelated to this central claim. Moreover, given the limited time in which to conduct the hearing, the other issues could not be heard in this hearing. The most important matter that must be dealt with is determining whether this tenancy will continue.

I explained to the parties that I would dismiss the tenant's claims 3 through 5, inclusive, with leave to reapply. As such, this decision will only address claims 1, 2 and 6.

### Issues

1. Is the tenant entitled to an order cancelling the One Month Notice?
2. Is the tenant entitled to an order cancelling the 10 Day Notice?
3. If no to either 1 or 2 is the landlord entitled to an order of possession?
4. Is the tenant entitled to recovery of the filing fee?

### Background and Evidence

The landlord testified that the tenancy began in March of 2014, and that rent was initially \$1,300.00, due on the fourth of the month. Rent was then raised in October 2018 to \$1,352.00, and then raised in March 2020 to \$1,384.15.

He went on to testify that he gave the tenant the One Month Notice, a copy of which submitted into evidence, on February 11, 2020. The One Month Notice stated that it was being issued because the tenant (1) "is repeatedly late paying rent" and (2) has "significantly interfered with or unreasonably disturbed another occupant or the landlord." The notice gave the tenant until March 31, 2020 to vacate the premises.

The landlord testified that the tenant has been late paying rent a total of 19 times since 2017, and before that, "many more times than that." He stated that he had not issued or served any 10 Day Notice to End Tenancy for Unpaid Rent before the most recent one. The most recent of the late rent payments occurred in August 2019. The landlord

submitted into evidence a spreadsheet showing which rent payments were late and which were on time.

Regarding the second ground on which the One Month Notice was served, the landlord testified that the tenant has been “very difficult with the tenants downstairs.” In addition, the tenant has a dog and is “not good at cleaning up.” Pest problems have resulted. He described the tenant as “difficult in general.” Moreover, the tenant had called the police and alleged that the downstairs tenants were involved in hard drug use. The tenant, according to the landlord’s advocate, complaints about “dogs, drugs, cooking” and marijuana. She went on to explain that the tenant has engaged in intimidation, and referenced pages 74, 112, and 113 of the landlord’s written evidence as support.

On March 5, 2020, the landlord issued a 10 Day Notice for rent that was owing as of March 4, 2020. A copy of this notice was submitted into evidence. Both parties spoke of a promissory note that they had entered into to the amount of approximately of \$7,000.00, for the tenant to start paying rent arrears. The landlord noted that the tenant has “been catching up,” but that he still owes rent.

In his testimony, the tenant stated that the landlord’s testimony about why the notices were issued are “absolutely false.” He went on to testify about all of the times that he paid rent on time and referred to several text messages between the parties. He apparently paid an undetermined amount above the rent for various utilities, though he commented that he has never seen copies of the utility bills. He has paid rent early, in several instances. Finally, he spoke about the confusion by the landlord as to what the actual amount of rent arrears is, and that “the numbers don’t match.”

He further testified that the issuing of the notices came about as a result of him complaining to the police about the lower tenants and their apparent drug use and behavior. And, he commented that “everything was hunky dory until the complaint.”

In his final submissions the landlord and his advocate argued that the issuing of the notices has nothing to do with the complaint, rather, they have to do with the ongoing issues and problems and for the repeated late payment of rent. The landlord added that it is “too much work and effort” trying to always get rent on time.

In his final submissions the tenant remarked that the timing of the notices is peculiar, and that while he may have been behind on paying for utilities, that the landlord has never given him a copy of any utilities bill.

## 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 noted in the introduction, where a tenant disputes a notice to end the tenancy, the onus shifts to the landlord to prove the grounds on which the notice(s) was given.

### **10 Day Notice to End Tenancy**

The landlord issued this notice on March 5, 2020 for rent arrears that were owing from a previous rental period in the amount of \$746.00. The spreadsheet submitted into evidence by the landlord reflects ongoing arrears of rent dating back to March 1, 2016 and peaking at \$6,190.00 in October 2016. Slowly, over time, the tenant paid additional amounts, which brought the balance down to -\$88.00 on November 8, 2019, and then into the positive in the amount of \$606.00. This debit moved back into the negative – to the amount of \$746.00 – on March 4, 2020.

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. If a tenant does not pay the rent on time, then under section 46(1) of the Act, the 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.”

In this case, the tenant had unpaid rent in the amount of \$746.00 that was owing as of March 4, 2020. The next day, the landlord issued the 10 Day Notice for this amount.

While the tenant testified about multiple times he had paid rent on time, he did not at any time during the hearing specifically address the amount owing as stated in the 10 Day Notice. Much was made about him paying amounts over and above the rent for utilities and mentioned that he had never been given any bills for the utilities. However, the landlord’s spreadsheet which reflects the growing (and eventually declining) rent arrears balance exclude any amounts or reference to supposed utility amounts. The tenant argued that his numbers did not match those of the landlord, but the amounts in the spreadsheet are, I find, quite clear and unambiguous. No counter documentary evidence was submitted showing that the amount of \$746.00 was false.

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 proving the ground on which the 10 Day Notice was issued. Accordingly, the tenant's application for an order cancelling the 10 Day Notice is dismissed.

Section 55(1) of the Act states that

If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Section 52 of the Act is about the form and content of a notice to end tenancy, and it reads as follows:

In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy,
- (d.1) for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied by a statement made in accordance with section 45.2 [*confirmation of eligibility*], and
- (e) when given by a landlord, be in the approved form.

In this dispute, I have reviewed the 10 Day Notice and find that it complies with section 52 of the Act. Having dismissed the tenant's application to cancel the 10 Day Notice, I thus grant the landlord an order of possession pursuant to section 55(1) of the Act. This order is issued in conjunction with this decision.

### **One Month Notice**

Having upheld the 10 Day Notice and having granted the landlord an order of possession, I need not consider the One Month Notice to End Tenancy.

### **Recovery of Filing Fee**

The tenant is not entitled to recovery of the filing fee.

### **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.

It should be noted that, at this time, most orders of possession (with the exception of those issued under sections 56 and 56.1 of the Act) are not enforceable in the BC Supreme Court during the current provincial state of emergency, as per Ministerial Order No. M089, [\*Residential Tenancy \(COVID-19\) Order\*](#), MO 73/2020.

Finally, I note that the provincial state of emergency does not suspend or defer tenant and landlord obligations under the Act. The parties should refer to the *Residential Tenancy (COVID-19) Order*, MO 73/2020, for further information.

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: April 27, 2020

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Residential Tenancy Branch