



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR

### Introduction

The tenant, represented by an agent, filed an Application for Dispute Resolution on February 14, 2020 seeking an order to cancel the '10 Day Notice to End Tenancy for Unpaid Rent or Utilities' (the "10 Day Notice") issued by the landlord on February 11, 2020. The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the "Act") on May 26, 2020.

I amend the style of cause on this decision to name the proper party who was the only tenant in the rental unit. The agent for the tenant filed on behalf of the tenant for this hearing and spoke to the relationship in the hearing.

The agent for the tenant and the landlord attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions and present oral testimony during the hearing. At the outset of the hearing, I clarified the rental address and so amended the tenant's application to state the same.

The tenant stated that they delivered notice of this dispute to the landlord via email, then by registered mail to the landlord. The landlord confirmed this, and the tenant then confirmed receipt of the landlord's evidence prepared for this hearing.

### Preliminary Matters

The landlord provided a copy of the tenancy agreement for this hearing. The agreement names two tenants: one is the agent for the tenant in this hearing; the other is a sibling to the sole tenant who was living in the unit. The agent for the tenant who attended the hearing provided that the sibling was originally going to move in; however, this changed to the occupying tenant. The occupying tenant signed the tenancy agreement with the landlord on September 1, 2019.

The agent for the tenant who attended the hearing is named as a tenant on the tenancy agreement. The agent is also a family member. For these reasons, I am satisfied the authority for the agent to act on the tenant's behalf is in place.

The landlord provided page 1 of a 'Monetary Order Worksheet', with a 'tenant statement – rent roll'. This shows the outstanding amount of \$7,625.00 as of May 8, 2020. The worksheet is attached to an 'Amend an Application for Dispute Resolution' form in which the landlord provides the correct rental unit address and indicates that they wish to recover money for unpaid rent.

The landlord presented that the rent payments have been coming in past the set payment date for "most of the tenancy." As of the hearing date, there is a current amount owing of \$6,725.00, with payments in "bits and pieces" within the month prior to the hearing.

In the hearing I informed the landlord that they are not the applicant in this hearing and there is no avenue for them to amend an application. They specified they are not asking for a monetary order and made this document to show the outstanding rent balance. In this decision I make no ruling on the provision of rent payments from the tenant to the landlord. The issues are those named at the beginning of this decision. The landlord is free to apply for a monetary amount in a separate dispute resolution application.

#### Issue(s) to be Decided

- Are the tenants entitled to an order to cancel the 10 Day Notice pursuant to section 46 of the *Act*?
- If the tenants are unsuccessful in seeking to cancel the 10 Day Notice, are the landlords entitled to an order of possession pursuant to section 55 of the *Act*?

#### Background and Evidence

I have reviewed all evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

The landlord provided a copy of the residential tenancy agreement, and both parties confirmed the relevant details. The occupying tenant signed the tenancy agreement together with the landlord on September 1, 2019 for the tenancy commencing on that same date. The tenancy is that of a fixed term to end on August 31, 2020. The monthly rent is \$2,000.00 payable on the first of each month. The tenant paid a security deposit on August 2, 2019.

The landlord provided a copy of the 10 Day Notice, issued on February 11, 2020 giving the vacancy date of February 19, 2020. They also submitted a copy of a 'Proof of Service' of the same, showing the document was served under the door of the rental unit to the occupying tenant, with a witness observing. The landlord and witness signatures bear the date of February 10; however, the issuance of the 10 Day Notice is February 11, and the proof of service document provides February 11, 2020 as the date of service.

The tenant presented that the occupying tenant of the unit – so named as a tenant on the agreement – is in the unit on their own without roommates. This has caused a significant burden on the ability to pay the full amount of rent each month. Additionally, the occupying tenant was ill recently, and recent emergency measures interrupted their employment. The tenant described this as a “perfect storm”. There are hopeful prospects for another roommate in the near future, and the occupying tenant has recently gained employment.

The tenant is hopeful to have the outstanding rent amount paid by the end of June 2020 and reiterated that the occupying tenant is actively seeking roommates.

The occupying tenant remains in the rental unit. More recently, the tenants are making rent payments incrementally. They acknowledge it has been this way for the past few months.

### Analysis

Section 46(1) of the *Act* states that a landlord may end a tenancy if rent is unpaid on any day after the rent is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the tenant receives the notice.

Section 46(4) of the *Act* states that within 5 days of receiving a notice a tenant may pay the overdue rent, thereby cancelling the Notice, or dispute it by filing an Application for Dispute Resolution. Here, I find the 10 Day Notice was served on February 11, 2020. The tenant applied to cancel it on February 14, 2020 within the legislated timelines.

Section 26 of the *Act* requires a tenant to pay rent when it is due under the tenancy agreement whether or not the landlord complies with the *Act*, the regulations or the tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the rent.

I find the record is clear – with full acknowledgement from the agent for the tenant – that rent payments have been late and varying in amounts. They also are aware of the outstanding balance. For this reason, I dismiss the tenant’s application to cancel the 10 Day Notice.

Under section 55 of the *Act*, when a tenant’s application to cancel a Notice to end tenancy is dismissed and I am satisfied the Notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the landlord an order of possession.

I find the 10 Day Notice complies with the requirements for form and content with each detail. These are, as in section 52: the signature and date of the landlord; the address of the rental unit; the effective date of the notice (i.e., the move out date); and the grounds for ending the tenancy. The document itself is in the approved form as specified in the *Act*.

Given my finding that the 10 Day Notice complies with the requirements of form and content, the landlord is entitled to an order of possession on the effective date. The tenancy ends on the date specified in the order, dependent on service by the landlord to the tenant.

Conclusion

For the reasons outlined above, I dismiss the tenant's application for a cancellation of the 10 Day Notice, without leave to reapply.

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenants. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia. In line with the style of cause of this decision, the Order names the occupying tenant of the rental unit.

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: May 29, 2020

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Residential Tenancy Branch