



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed the tenant served the landlord with the notice of hearing package by placing it in the landlord's mailbox on July 8, 2020. The tenant confirmed that no documentary evidence was submitted. The landlord's counsel (the landlord) stated that the submitted documentary evidence was served to the tenant via email on July 30, 2020. The tenant confirmed receipt as claimed by the landlord. Neither party raised any service issues. I accept the undisputed affirmed evidence of both parties and find that both parties were properly served as per sections 88 and 89 of the Act.

### Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 10 Day Notice?

### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

Both parties confirmed that neither party had submitted a copy of the 10 Day Notice dated June 29, 2020, however, both parties agreed to the following in their direct testimony.

The landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated June 29, 2020 in person on June 29, 2020. The 10 Day Notice sets out that the tenant failed to pay rent of \$400.00 that was due on March 1, 2020. The 10 Day Notice provides for an effective end of tenancy date of July 12, 2020.

Both parties confirmed that monthly rent is \$1,200.00 payable on the 1<sup>st</sup> day of each month.

The landlord clarified that the \$400.00 rental arrears are not “affected rent” but rental arrears that occurred prior to the state of emergency on March 18, 2020.

Both parties confirmed that on March 1, 2020 the tenant made a partial payment of \$800.00.

The tenant argues that he made a cash payment of \$400.00 to the landlord on March 4, 2020.

The landlord disputed this claim that no such payment was made. The landlord also argued that the tenant failed to file his application within the allowed timeframe. The landlord noted that the tenant in order to file an application for dispute filed an application with service of the 10 Day Notice on June 29, 2020 “posted to the rental unit door”. The landlord stated that this is in direct contrast with the tenant’s direct testimony that the 10 Day Notice was served in person on June 29, 2020 during the hearing. The tenant made no comments on this issue during the hearing. The landlord also referenced text messages between the landlord and the tenant’s room mate, R.P. The landlord described the text message exchange dated March 13, 2020 which the landlord describes that the tenant’s funds would not be released by the bank until the following Monday (March 16, 2020). The text messages from the landlord to the tenant referenced the outstanding \$400.00 on March 16, 2020. It continues with a response dated March 16, 2020 from the tenant, R.P. that “...and still my money is not available.” The landlord also referred to a handwritten receipt dated March 4, 2020 for an \$800.00 payment. The tenant stated that he did not notify R.P. that the outstanding rent was paid.

### Analysis

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice. Despite Ministerial Order M095 of the Emergency Program Act, I find that the “affected rent” in this case pre-date the state of emergency that was imposed on March 18, 2020.

In this case the both parties confirmed that the tenant received the 10 Day Notice dated June 29, 2020 in person on June 29, 2020 for unpaid rent of \$400.00 that was due on March 1, 2020.

The landlord has argued that the tenant on his application for dispute stated that the 10 Day Notice was served “posted to the rental unit door” which is contrary to his direct testimony. The tenant provided no explanation of this contradiction but confirmed that he was served in person on June 29, 2020.

Section 46 (4) of the Act states in part that a tenant may dispute the notice by making an application for dispute within 5 days after receiving the notice. In this case, the landlord has claimed that the 10 Day Notice was served in person on June 29, 2020. The tenant confirmed service on this date as claimed by the landlord in his direct testimony. The tenant argued that he was told that he had 1 additional day to file the application for dispute when he had applied. The landlord also referenced that the tenant’s application for dispute which states that the tenant received the notice posted to the rental unit door. The landlord argued that this is in direct contradiction by the tenant’s direct testimony. The tenant did not clarify or explain this discrepancy. On this basis, I find that the tenant received the 10 Day Notice in person as claimed by the landlord on June 29, 2020.

Section 46 (5) also states that a tenant who receives this notice under this section does not pay or make an application for dispute resolution is conclusively presumed to have accepted that the tenancy ended on the effective end of tenancy date and must vacate the rental unit. On this basis, I find that the tenant failed to file an application for dispute within the allowed 5 day timeframe and is conclusively presumed to have accepted that the tenancy was at an end. The tenant’s application is dismissed. The 10 Day Notice dated June 29, 2020 is upheld. The landlord is granted an order of possession to be effective 2 days after it is served upon the tenant.

Conclusion

The landlord is granted an order of possession.

This order must be served upon the tenant. Should the tenant fail to comply with this order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

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: August 10, 2020

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Residential Tenancy Branch