



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR

### Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenants applied for cancellation of the landlord's 10 day Notice to End Tenancy for unpaid Rent or Utilities (the Notice), pursuant to section 46 of the Act.

The respondent (landlord) called into this teleconference at the date and time set for the hearing of this matter and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The applicants (tenants) did not, although I waited until 11:30 A.M. to enable them to connect with this teleconference hearing scheduled for 11:00 A.M.

I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the landlord and I were the only persons who had called into this teleconference.

The landlord confirmed she received the Notice of Hearing from the tenants on July 13, 2020. The landlord served her evidence on the tenants on August 06, 2020 by attaching it to the back patio door of the rental unit, in accordance with section 89(2)(d) of the Act. I deem the tenants received the evidence on August 09, 2020, three days after it was attached to the back patio door, in accordance with section 90(c) of the Act.

Rule of Procedure 3.15 states the respondent must serve the evidence not less than seven days before the hearing. As the respondent (landlord) served her evidence less than seven days before the hearing, I do not accept the landlord's evidence.

I proceeded with the hearing in the absence of the tenants, as per Rule of Procedure 7.3.

Preliminary Issue – Tenants' application dismissed

Rules 7.1 and 7.3 of the Rules of Procedure provide as follows:

**Rule 7 – During the hearing**

**7.1 Commencement of the dispute resolution hearing**

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

**7.3 Consequences of not attending the hearing**

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

Accordingly, in the absence of any attendance at this hearing by the applicants (tenants) I order the application dismissed without leave to reapply.

However, according to *M.B.B. v. Affordable Housing Charitable Association*, 2018 BSCS 2418, the landlord must still prove the grounds to end the tenancy:

[27] I accept that it was open to the arbitrator to proceed with the hearing or dispense with the hearing altogether and decide the matter in the absence of M.B.B., but in doing so, the arbitrator still had to resolve the issue raised by the application on the merits in some way. It was insufficient to dismiss the application solely on the ground that M.B.B. had not dialed in to the hearing within the first ten minutes as she was supposed to have done.

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 is compliant with the *Act*.

Issues to be Decided

1. Are the tenants entitled to cancellation of the Notice?
2. If the tenants' application is dismissed, is the landlord entitled to an order of possession based on the Notice?

### Background and Evidence

While I have turned my mind to all the accepted evidence, including the testimony of the landlord, not all details of the submission and arguments are reproduced here.

The landlord affirmed the tenancy started on July 31, 2013. Rent is \$3,359.00 per month, due on the 15<sup>th</sup> day of the month. At the outset of the tenancy a security deposit of \$1,500.00 and a pet damage deposit of \$500.00 were collected and the landlord still holds them in trust. The tenants did not vacate the rental unit.

A copy of the Notice was provided. It does not indicate the effective date and it indicates it was signed on July 16, 2020. On the second page it indicates it was served on July 06, 2020.

The landlord stated the rental unit's curtains are closed and the lights are off, but the landlord did not receive the keys.

The landlord explained the Notice was served in person on July 16, 2020. At a later point the landlord corrected herself and stated it was actually served on July 06, 2020.

The landlord argued there was a mistake when the notice was completed, she was dealing with several documents and the notice served to the tenants contained the effective date.

### Analysis

Section 52 of the Act states:

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,

The landlord's testimony was not convincing or cohesive. The landlord corrected herself during the short testimony. Based on the copy of the notice provided, I find the Notice served does not contain the effective date. As such, I find the Notice does not comply with section 52 of the Act and I cannot issue an order of possession.

Conclusion

The Tenant's application to cancel the landlord's 10 Day Notice is dismissed. The Notice does not meet the requirements of section 52 of the Act and therefore I decline to issue an Order of Possession. This tenancy shall continue until it is ended in accordance with the Act.

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 13, 2020

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Residential Tenancy Branch