



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Vancouver Management Ltd. and  
[tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR, LRE, OPR

### Introduction

This hearing was set to deal with cross applications. The tenants filed to dispute a 10 Day Notice to End Tenancy for Unpaid Rent and orders to suspend or set conditions on the landlord's right to enter the rental unit. The landlord applied for an Order of Possession for unpaid rent.

Both parties appeared or were represented at the hearing and had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

At the outset of the hearing, I explored service of the proceeding packages upon each other.

The tenant testified that he slid the tenant's proceeding package under the door of the landlord's office located in an adjacent building. The landlord's agent testified that a proceeding package was not received from the tenants and she had checked with the caretaker several times to see if a package was received. The landlord's agent stated that she became aware the tenants had filed an Application for Dispute Resolution because she received an email notification from the Residential Tenancy Branch. The landlord pointed out that sliding a proceeding package under the door is not acceptable service.

An Application for Dispute Resolution must be served in a manner that complies with section 89 of the Act. An applicant must be prepared to prove they served their Application for Dispute Resolution in a manner that complies with the Act. Sliding an Application for Dispute Resolution under a door is not a permissible method of service under section 89 of the Act and the landlord denied receiving the tenant's Application for Dispute Resolution regardless of the method of service, if the proceeding package was

slid under the landlord's office door. I find the tenant failed to prove the tenant's Application for Dispute Resolution was served in a manner that complies with the Act or otherwise received by the landlord. Therefore, I dismissed the tenant's Application for Dispute Resolution; however, with a view to fairness to the tenants, I gave the tenant the opportunity to present a basis for setting aside the 10 Day Notice to End Tenancy for Unpaid Rent during the hearing.

The landlord's agent submitted the landlord sent its proceeding package to each of the tenants via registered mail on September 29, 2020 and a search of the tracking numbers showed the registered mail packages were delivered on September 30, 2020 and October 1, 2020. The tenant confirmed he received the registered mail and that he was representing himself and his wife for this proceeding. I was satisfied the landlord duly served the tenants with its proceeding package, including evidence, and I continued to hear the landlord's application for an Order of Possession for unpaid rent.

#### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

#### Background and Evidence

The facts of this case were largely undisputed. The tenancy started on August 1, 2015 and the landlord collected a security deposit of \$645.00. The monthly rent was initially set at \$1290.00 payable on the first day of every month. Over the years the rent increased periodically with the most recent Notice of Rent Increase increasing the rent to \$1409.00 starting August 1, 2019.

The tenants failed to pay rent that was due on September 1, 2020 and on September 10, 2020 the caretaker issued a 10 Day Notice to End Tenancy for Unpaid Rent and posted it to the tenant's door the same day. The tenant acknowledged receiving the 10 Day Notice the same day it was posted to the door. The 10 Day Notice indicates the tenants failed to pay rent of \$1469.00 on September 1, 2020 and a stated effective date of September 23, 2020. After serving the 10 Day Notice the tenants did not pay any of the outstanding rent. Nor, have the tenants paid any monies to the landlord for October 2020 or November 2020 and the tenants continue to occupy the rental unit.

The landlord explained the \$1469.00 appearing on the 10 Day Notice is the sum of rent of \$1409.00 and a parking fee of \$60.00. The landlord's agent stated that a parking fee of \$60.00 has been charged to the tenants starting May 2020.

The tenant acknowledged they did not pay the rent for September 2020 because he has been unemployed since April 2020 and he spent financial assistance received from the federal government on food and other bills for his family. The tenant disputes that they owe any money for parking fees and they have never paid any parking fees.

The tenant requested the opportunity to enter into a repayment plan with the landlord for the outstanding rent. The landlord's agent indicated she was not interested in doing so as the landlord does not believe the tenant will fulfill their obligations since they did not make any effort to pay rent, or even a portion of the rent, since April 2020. The tenant agreed that the last time they paid rent was in March 2020.

### Analysis

Under section 26 of the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement, even if the landlord has violated the Act, regulations or tenancy agreement, unless the tenant has a legal right to withhold rent.

Where a tenant does not pay rent the landlord is at liberty to serve the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent. When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the 10 Day Notice or the tenant has five days to dispute the 10 Day Notice by filing an Application for Dispute Resolution.

It should be noted that on March 30, 2020 an Order was issued by the Minister of Public Safety and Solicitor General under the *Emergency Program Act* suspending a landlord's right to issue a Notice to End Tenancy due to the state of emergency as a result of the Covid-19 pandemic ("Minister's Order"). However, the suspension was lifted for 10 Day Notices for rent that becomes payable on August 17, 2020 or later.

I accept the unopposed evidence before me that the tenants were required to pay rent of \$1409.00 on the first day of every month and the tenants failed to pay the rent that was due on September 1, 2020. I also accept that the tenants received a 10 Day Notice on September 10, 2020 and the tenants did not pay the outstanding rent within five days of receiving the 10 Day Notice. Upon review of the 10 Day Notice, I find that it is in the approved form and it is duly completed.

The tenants failed to dispute the 10 Day Notice; however, their Application for Dispute Resolution was dismissed since it was not duly served upon the landlord. Nevertheless,

I gave the tenant the opportunity to provide any basis for me to cancel the 10 Day Notice. The tenant's submissions are consistent with financial hardship which is not a basis for me to cancel a 10 Day Notice under the Act.

Although the tenant disagreed that they owe parking fees, it remains that the tenants did not pay any of the rent that was payable for September 2020 and the tenants knew how much their monthly rent obligation was.

The tenant also requested the opportunity to enter into a repayment plan with the landlord for the outstanding rent; however, a landlord is only obligated to enter into a repayment plan for unpaid rent incurred during the period of March 18, 2020 through August 17, 2020. Accordingly, unpaid rent after this period is not subject to a statutory obligation to enter into a repayment plan and I cannot force the landlord to enter into a repayment plan for rent that became payable after August 17, 2020.

In light of the above, I find the landlord is entitled to an Order of Possession for unpaid rent. Provided to the landlord with this decision is an Order of Possession effective two (2) days after service upon the tenants.

### Conclusion

The tenant's Application for Dispute Resolution is dismissed.

The landlord is provided an Order of Possession effective two (2) days after service upon the tenants.

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: November 03, 2020

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Residential Tenancy Branch