



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MT, CNR, OLC

### Introduction

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

- more time to cancel a Notice to End Tenancy, pursuant to section 66;
- cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to section 46; and
- an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62.

The tenant did not attend this hearing, although I left the teleconference hearing connection open for 11 minutes in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

Rule 7 of the Rules of Procedure provides as follows:

#### **7.1 Commencement of the dispute resolution hearing**

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. Rule 7.3 states that 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.

Based on the above, in the absence of any evidence or submissions from the applicant I order the application dismissed without liberty to reapply.

### Background/Evidence

The landlord testified to the following facts. This tenancy began on September 25, 2018 and is currently ongoing. Monthly rent in the amount of \$1,200.00 is payable on the first day of each month. A security deposit was paid by the tenant to the landlord.

The landlord testified that on September 8, 2020 the tenant was personally served with the 10 Day Notice. The 10 Day Notice is signed, dated and states an effective date of September 18, 2020. The tenant's application for dispute resolution states that the tenant received the 10 Day Notice on September 8, 2020. I accept the landlord's testimony that the 10 Day Notice was personally served on September 8, 2020. I find that the 10 Day Notice was served in accordance with section 88 of the *Act*.

The landlord testified that he only received the tenant's \$600.00 rent subsidy towards September 2020's rent and that the tenant has not paid the outstanding \$600.00 of September 2020's rent.

### Analysis

I find that the 10 Day Notice complies with section 52 of the *Act*.

Section 55 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.

Since the 10 Day Notice complies with the *Act* and the tenant's application to cancel the 10 Day Notice was dismissed, the landlord is entitled to a two-day Order of Possession.

Section 26(1) of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*. Pursuant to section 26(1) of the *Act*, I find that the tenant was obligated to pay the monthly rent in the amount of \$1,200.00 on the first day of each month. Based on the undisputed testimony of the landlord I find that the tenant did not pay rent in accordance with section 26(1) of the *Act*.

Section 46(1) of the *Act* states that a 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.

Section 46(4) of the *Act* states that within 5 days after receiving a notice under this section, the tenant may

- (a) pay the overdue rent, in which case the notice has no effect, or
- (b) dispute the notice by making an application for dispute resolution.

I accept the landlord's undisputed testimony that the tenant did not pay September 2020's rent in full, within five days of receipt of the 10 Day Notice. I therefore uphold the landlord's 10 Day Notice, in accordance with sections 26 and 46 of the *Act*. I therefore find that the landlord is entitled to two-day Order of Possession for nonpayment of rent, in accordance with section 55 of the *Act*.

### Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service on the tenant**. 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.

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 16, 2020

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Residential Tenancy Branch