



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding BC HOUSING  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR, OLC, DRI, MNDCT, RR

### Introduction

On September 18, 2020, the Tenant filed an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) to cancel a 10-Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10-Day Notice”) issued on September 16, 2020, to dispute a rent increase that is above the amount allowed by law, for an order for the Landlord to comply with the Act, for a rent reduction for repairs, services or facilities agreed upon but not provided, and for a Monetary Order for compensation. The matter was set for a conference call.

The Tenant, their Advocate (the “Tenant”) and the Landlord attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenant were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure requires the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

### Preliminary Matters- Related Issues

I have reviewed the Tenant’s application, and I note that he has applied to cancel two Notices to end tenancy as well as for several other issues. I find that some of these other issues are not related to the Tenant’s request to cancel these Notices. As these

matters do not relate directly to a possible end of the tenancy, I apply section 2.3 of the Residential Tenancy Branches Rules of Procedure, which states:

**2.3 Related issues**

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

Therefore, I am dismissing with leave to reapply, the Tenant's claims for an order for the Landlord to comply with the Act, for a rent reduction for repairs, services or facilities agreed upon but not provided, and for a Monetary Order for compensation.

I will proceed with this hearing on the Tenant's claim to cancel the 10-Day Notice and to dispute a rent increase that is above the amount allowed by law.

Issues to be Decided

- Should the Notice issued on September 16, 2020, be cancelled?
- If not, is the Landlord entitled to an order of possession?
- Did the Landlord issue a rent increase that was above the amount allowed by law?

Background and Evidence

The tenancy agreement shows that the tenancy began on May 1, 2012. The Landlord testified that the current rent is \$633.00 per month. The Tenant's Advocate testified that after reviewing the Landlord's evidence, they agreed that the current rent is \$633.00 per month.

The Landlords testified that they served the 10-Day Notice to the Tenant on September 16, 2020, by posting it to the front door of the rental unit. The 10-Day Notice has an effective date of September 29, 2020, and an outstanding rent amount of \$774.00.

The Landlords testified that the \$774.00 in unpaid rent consisted of \$258.00 for July 2020, \$258.00 for August 2020 and \$258.00 for September 2020. The tenant had not paid the outstanding rent on the Notice for December 2018 and had also not paid the rent for January 2019.

The Tenant testified that they have secured the funds to pay the full arrears but have not yet provided that payment to the Landlord. The Tenant requested a settlement of this issue, stating they would pay all rent arrears if the Landlord would withdraw the Notice.

The Landlord testified that they still wish to end this tenancy; they are requesting that the Notice be enforced and that an order of possession is issued, as the Tenant did not pay the rent within five days of receiving the 10-Day Notice as required.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I find that the parties agreed that the monthly rent for this tenancy was \$633.00 per month, and I dismiss the Tenant's claim to dispute a rent increase for this tenancy.

Section 46 of the *Act* requires that upon receipt of a Notice to End Tenancy for Non-payment of Rent, a tenant must, within five days, either pay the amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does not do either of these things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice under section 46(5).

#### **Landlord's notice: non-payment of rent**

**46** (1) 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.

(2) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.

(3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.

(4) 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.

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by that date.

I find that the Tenant received the 10-Day notice on September 18, 2020, within three days after it had been posted to the front door of the rental unit and that they did apply to dispute the Notice on the same day, within the legislated timeline.

I accept the agreed-upon testimony of both parties that the Tenant had not paid the outstanding rent, as stated on the 10-Day Notice, within the required five days. Therefore, I find that the Tenant is in breach of section 26 of the Act by not paying the rent in accordance with the tenancy agreement, and I dismiss the Tenant's application to cancel the 10-Day Notice.

Section 55 of the *Act* states that a landlord may request an order of possession if a notice to end the tenancy has been given by the landlord, and the tenant's application to dispute the notice has been dismissed.

#### **Order of possession for the landlord**

**55** (1) 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.

I have reviewed the 10-Day Notice to End Tenancy, and I find the 10-Day Notice complies with section 52 of the *Act*. As I have dismissed the Tenant's application, pursuant to section 55 of the *Act*, I must grant the Landlords an order of possession to the rental unit.

I find that the Landlord is entitled to an order of possession, pursuant to section 55 of the *Act*, effective two days after service on the Tenant. This order may be filed in the

Supreme Court and enforced as an order of that Court. The Tenant is cautioned that the costs of such enforcement are recoverable from the Tenant.

Conclusion

I grant an **Order of Possession** to the Landlord effective **two days** after service of this Order 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 13, 2020

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Residential Tenancy Branch