



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, RP, PSF, LRE, RR, OLC, FFT

### Introduction

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

- cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to section 46;
- an Order that the landlord's right to enter be suspended or restricted, pursuant to section 70;
- an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62;
- an Order for regular repairs, pursuant to section 32;
- an Order to provide services or facilities required by the tenancy agreement or law, pursuant to section 65;
- an Order to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. M.L., who is listed as a landlord on the tenancy agreement also attended this hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses

Both parties agree that in October 2020 the tenant posted a handwritten notice on the landlord's door informing the landlord about the tenant's claim for dispute resolution. Both parties agree that the tenant did not provide the landlords with a Notice of Hearing. The landlords testified that they only learned of the specifics of this hearing because

they called in. The tenant testified that she was not provided with a Notice of Hearing from the Residential Tenancy Branch.

The Residential Tenancy Branch note on this file dated October 20, 2020 states:

TT CALLED AND ADVISED THAT SHE NEVER REC'D NOH DOCS. RESENT NOH DOCS TO TT AND ADVISED THAT SHE SHOULD SERVE ON THE LL ASAP EVEN THO IT WILL BE LATE AND THAT IT WILL THEN BE TO ARB TO ACCEPT LATE SERVICE DEPENDING UPON ANY OBJECTIONS FROM LL - TT CONFIRMED SHE REC'D EMAIL. TT ALSO HAD QUESTIONS REGARDING SERVICE OF EVID ON LL AND FILING WITH RTB AND DEADLINES. TT SAYS SHE DOESN'T HAVE ABILITY TO PRINT NOH DOCS AND CAN WE SERVE. I EXPLAINED RTB DOESN'T SERVE DOCS ON PARTIES AND THAT IT IS THE PARTIES RESPONSIBILITIES. I SUGGESTED THAT SHE SENT THE EMAIL TO SOMEONE SHE KNOWS WHO CAN PRINT OUT DOCUMENTS.

Based on the testimony of both parties, I find that the tenant received the Notice of Hearing documents on October 20, 2020 and failed to serve the Notice of Hearing documents on the landlord.

Section 89 of the *Act* establishes the following Special rules for certain documents, which include an application for dispute resolution:

*89(1) An application for dispute resolution,...when required to be given to one party by another, must be given in one of the following ways:*

- (a) by leaving a copy with the person;*
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;*
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;*
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;*
- (e) as ordered by the director under section 71(1) [director's orders: delivery and service of document]...*

I find that the tenant did not serve the landlord in a manner required by section 89(1) of the *Act*. I find that it was the tenant's responsibility to serve her application for dispute resolution on the landlord and failed to do so. I therefore dismiss the tenant's application with leave to reapply.

I note that section 55 of the *Act* requires that when a tenant submits an application for dispute resolution (the "application") 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 or the landlord's notice to end tenancy is upheld and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

### Background/Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on December 22, 2018 and is currently ongoing. Monthly rent in the amount of \$2,100.00 is payable on the first day of each month. A security deposit was not paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

Both parties agree that the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") on the tenant's door on October 2, 2020. The tenant testified that she received the Notice on October 2, 2020. The effective date of the Notice is October 17, 2020.

Both parties agree that the tenant did not pay full rent in August 2020 and has not paid any rent from September to December 2020. The tenant testified that she does not have the money to pay rent right now.

The landlord testified that in early September 2020 the landlord told the tenant that the tenant could pay for August and September's rent after the tenant's divorce finalized but that rent going forward, from October 1, 2020 onwards, would need to be paid on time as the landlord has mortgage responsibilities. The tenant did not dispute that this conversation occurred and testified that there were many conversations.

The tenant testified that the landlord verbally told her that she could make a repayment schedule for the unpaid rent when her divorce finalized and so was surprised when the landlord served her with the Notice.

The landlord testified that the Notice was issued because the tenant did not pay October 2020's rent on time.

### Analysis

I find that the 10 Day Notice meets the requirements of section 52 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.

Based on the testimony of both parties, I find that the tenant did not pay the outstanding rent within five days of receiving the Notice. I therefore uphold the Notice. I find that the tenant has not proved that an alternate payment arrangement for October 2020's rent was agreed by the landlords.

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.

I find that since the Notice complies with section 52 of the *Act*, the Notice was upheld and the tenant's application to cancel the Notice was dismissed, the landlord is entitled to a two-day Order of Possession.

Conclusion

The tenant's application is dismissed with leave to reapply.

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: December 14, 2020

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Residential Tenancy Branch