



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

For the tenants: CNR-MT  
For the landlord: OPRM-DR, OPR-DR

### Introduction

On October 8, 2020 the tenant applied for dispute resolution for an order cancelling the 10-Day Notice to End Tenancy Issued for Unpaid Rent or Utilities issued by the landlord (the “10-Day Notice”). On this application, they requested more time to dispute the 10-Day Notice that the landlord issued on September 25, 2020.

One October 8, 2020 the landlord applied for an order of possession of the rental unit, and a monetary order for rent not paid. The landlord’s application here was filed initially as a Direct Request. The matter proceeded by way of participatory hearing because this Direct Request application cannot be considered by that method when there is a cross-application by the tenant in place.

The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the “Act”) on December 18, 2020. Both parties attended the conference call hearing. Both parties confirmed in the hearing that they received the documentary evidence prepared by the other in advance of the hearing.

Issue(s) to be Decided

Is the tenant entitled to more time in which to file an Application for Dispute Resolution, pursuant to section 66 of the *Act*?

Is the tenant entitled to an order that the landlord cancel the 10-Day Notice pursuant to section 46 of the *Act*?

Is the landlord entitled to issue an Order of Possession pursuant to sections 55 of the *Act*?

Is the landlord entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Background and Evidence

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

The landlord provided a copy of the tenant's initial rental application form signed May 13, 2020. Attached to this is a document titled "Agreement" that sets out basic terms. This does not provide for a monthly rent amount; however, it sets out that the tenant is obligated to pay on the first of each month. Additionally: "Tenant agrees to move out by without any further notice, if fails to pay full amount of the rent by 03 of the month will vacate the house by 05 of the month."

The tenant and then-landlord signed this single-paged document on May 13, 2013. There is a handwritten update on the document to say the ownership had changed, with the signature of the new landlord and the same tenant, on July 10, 2016.

In the hearing, the landlord spoke to the rent amount paid monthly by the tenant. This is \$1,700 per month. The tenants verified this amount in the hearing.

Both the landlord and the tenant provided a copy of the 10-Day Notice, issued on September 25, 2020. This listed the failure by the tenants to pay the rent, totalling

\$5,100 for “missed three months rent.” The form of this document provides that the tenants had “5 days to pay rent/utilities to the landlord or file an Application for Dispute Resolution.”

The landlord served this document by attaching it to the door and serving it in person. As provided in a ‘Proof of Service’ document the landlord provided, a witness signed to say they observed this service on “25/10/2020”. The landlord’s indication on this document is that they served the document at 5:30 p.m. on September 25, 2020. In the hearing the tenants stated they found this 10-Day Notice on September 25 at 7:00 p.m. on the door of the unit.

Concerning the reason for serving the 10-Day Notice, the landlord presented that the tenants did not pay rent from June onwards. At the time of the 10-Day Notice issuance on September 25, 2020, the landlord did not include the month of September in the indicated amount of \$5,100.

The tenants applied for a cancellation of the 10-Day Notice on October 8, 2020. This is past the 5-day timeframe specified on the top of the 10-Day Notice. On their Application, the tenants provided the following reason for their request for more time:

The Ministry of Social Development had been paying our rent but this was stopped due to no current tenancy agreement. The landlord has refused to accept rent payments he says he just wants us out.

Addressing this in the hearing, the tenants stated the ministry and social workers were trying to contact the landlord on their behalf, to no avail. They had tried to contact the landlord to make a new tenancy agreement, or alternatively to create a payment plan. The landlord would not return their calls.

The tenants also described how they went to income assistance right away; however, this also required a tenancy agreement. For these reasons, the tenants maintain that they “couldn’t pay the landlord unless the landlord did what income assistance wanted.”

The tenants also stated that they “could not apply for dispute resolution.” They went to Salvation outreach to obtain assistance. This left the passing of days from September 28 through to September 30. They needed to make sure they could see one certain individual, whose name the tenants stated in the hearing. They finally managed to see this individual on September 30. After this, they had to make another appointment after this individual gave them instructions on how to complete the required form for this

dispute resolution Application. This meant the tenants completed their Application for this hearing on October 8, 2020.

The landlord responded to this to say they never heard of this from the tenants in the critical time period after issuance of the 10-Day Notice. At one point the landlord went to income assistance on their own initiative; however, who said to the landlord: 'it's not our problem, that's between you and the tenants.' In the hearing, the landlord reiterated that they were not aware of the tenants' difficulties in obtaining income to pay rent due to the lack of a current tenancy agreement in place between the parties.

In the hearing the tenants also spoke to their repeated requests for repair. They stated this was the subject of another hearing which is pending in a separate dispute resolution process. Regarding the cleanliness of the unit, the landlord called pest control several times. Both parties in this hearing spoke to the issue of the tenants' requests and need for assistance from the landlord with pest control and garbage.

In a summary statement at the end of the hearing, the landlords state "the tenants completely refuse to pay rent." This missing rent for the basis of the landlord's monetary claim here. At the time of the hearing on December 18, the tenants had not paid since June. For this added total, the landlord gave the amount of \$11,900 in unpaid rent, stated in the hearing.

### Analysis

Section 46(1) of the *Act* states that a landlord may end a tenancy if rent is unpaid on any day after the rent is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the tenant receives the notice.

Section 46(4) of the *Act* states that within 5 days of receiving a notice a tenant may pay the overdue rent, thereby cancelling the Notice, or dispute it by filing an Application for Dispute Resolution.

In regard to the tenants' request to file the Application after the dispute period, the *Act* section 66(1) provides:

The director may extend a time limit established by this Act only in exceptional circumstances.

In these circumstances, I find that exceptional circumstances for the tenants are not proven in both the documentary evidence submitted, and their oral testimony. Therefore, I find the tenants are not entitled to more time to dispute the 10-Day Notice.

The tenants here presented that they were denied for social assistance until they could present a new tenancy agreement to the agencies that handle the administration of this service. They were unable to pay rent minus approval, and without a tenancy agreement they could not receive approval for income assistance. This is why rent remained unpaid, and why they could not pay rent within the 5-day time limit stated on the 10-Day Notice.

On my review of the copy of the 10-Day Notice submitted by the tenants for this hearing, the form does state:

You have 5 days to pay rent . . . to the landlord or file an Application for Dispute Resolution with the Residential Tenancy Branch online, in person at any Service BC Office or by going to the Residential Tenancy Branch Office. . .

The tenants did not pay rent, upon receipt of the 10-Day Notice, within 5 days. This left the alternative for them to apply for dispute resolution within that same time frame. Speaking to this in the hearing, the tenants provided how they had to wait for an appointment to see a specific individual in Salvation Army Outreach. This was not until September 30, leaving their Application delayed in its filing until October 8, 2020.

Their waiting for the appointment to speak with a certain individual at the outreach does not constitute exceptional circumstances. The evidence does not present how the appointment was integral to their Application. That is to say the tenants do not present why this certain individual's assistance was needed to complete an Application. Further, with this being a matter of urgency, the tenants did not present that they stressed that urgency to the individual whose assistance they needed – instead they waited a few days for an appointment, and then beyond that there was no Application filed until October 8, 2020. This chain of events does not constitute exceptional circumstances that prevented the tenants from filing their Application. Notice.

The landlord issued the 10-Day Notice on September 25, 2020. The tenants failed to apply for dispute resolution within the specified time limit of 5 days after they received it. As noted above, I have found the tenants are not entitled to more time.

For these reasons, I dismiss the tenants' Application to cancel the 10-Day Notice. The tenancy is ending.

Under section 55 of the *Act*, when a tenant's application to cancel a Notice to end tenancy is dismissed and I am satisfied the Notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the landlord an order of possession.

I find the One-Month Notice complies with the requirements of form and content. It is signed and dated by the landlord, gives the address of the rental unit, states the effective date, states the ground for ending the tenancy, and is in the approved form. For this reason, the landlord is entitled to an Order of Possession.

Regarding the landlord's monetary claim for compensation of lost rent payments, the *Act* section 26 outlines a tenant's duty to pay rent:

- (1) A tenant must pay rent when it is due under the tenancy agreement, whether the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent.

I accept the evidence before me that the tenant failed to pay full rent for June 2020 and the months following through to December 2020. The tenants did not give contradictory evidence to this point or deny that they did not pay rent over this time period.

The landlord's amendment to their Application to include the monthly rent unpaid after they filed their Application here is allowed by Rule 4.2 of the Residential Tenancy Branch Rules of Procedure.

I find the landlord is entitled to monetary compensation for unpaid rent. This is \$11,900, as per the tenancy agreement. Pursuant to section 67 of the *Act*, I grant the landlord a monetary order for this amount.

### Conclusion

I grant an Order of Possession to the landlord effective **two days** after service on the tenant. The landlord is provided with this Order in the above terms and the tenants must be served with this Order as soon as possible. Should the tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to section 67 of the *Act*, I grant the landlord a separate Monetary Order for the recovery of the rental amounts claimed. This amount is \$11,900. The landlord is provided with this Order in the above terms and the tenants must be served with this Monetary Order as soon as possible. Should the tenants fail to comply with this Monetary Order, it may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the *Act*.

Dated: December 21, 2020

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Residential Tenancy Branch