



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding NEST PROPERTY MANAGEMENT AND REAL ESTATE SERVICES LTD. and [tenant name suppressed to protect privacy]

## DECISION

Dispute Codes: CNC-MT CNR CNE OLC RR PSF LAT MNRT MNDCT

### Introduction

The tenant applied for various relief under the *Residential Tenancy Act* ("Act"), including the disputing of a One Month Notice to End Tenancy for Cause ("One Month Notice") and two 10 Day Notices to End Tenancy for Unpaid Rent ("10 Day Notices").

Both parties attended the hearing on January 25, 2021, held by teleconference. No issues of service were raised by the parties.

### Preliminary Issue: Dismissal of Claims Unrelated to the Notice

Rule 2.3 of the *Rules of Procedure*, under the Act, states that claims made in an application must be related to each other. It further states that an arbitrator may use their discretion to dismiss unrelated claims with or without leave to reapply.

Having reviewed the tenant's applications, I find that the claims other than the applications to dispute the notices to end tenancy are unrelated to this claim. The most important matter is determining whether the tenancy will continue.

Therefore, all other claims, including the applications made for orders under sections 31, 62, 65, 67, and 70 are dismissed, with leave to reapply. What this means is that the tenant may make a new application for dispute resolution claiming for those matters.

### Issues

1. Is the tenant entitled to an order cancelling the One Month Notice? If not, is the landlord entitled to an order of possession?
2. Is the tenant entitled to an order cancelling any of the 10 Day Notices? If not, is the landlord entitled to an order of possession?

### Background and Evidence

I have only reviewed and considered oral and documentary evidence meeting the requirements of the *Rules of Procedure*, to which I was referred, and which was relevant to determining the issues in the application. Only relevant evidence needed to explain my decision is reproduced below.

Under the written tenancy agreement, monthly rent is \$850.00, which is due on the first of the month. A copy of the tenancy agreement was in evidence.

The landlord's agent ("landlord") testified that he served a 10 Day Notice to End Tenancy for Unpaid Rent on December 2, 2020 for rent of \$875.00 that was due on December 1, 2020. The tenant paid half of this rent on December 21. On January 8, 2021, the landlord served another 10 Day Notice to End Tenancy for Unpaid Rent for unpaid rent of \$1,275.00 (\$875.00 due on January 1, 2021 and outstanding arrears of \$425.00 from December 2020). Copies of both 10 Day Notices were submitted into evidence, along with a copy of the landlord's ledger for the tenant's account.

The landlord testified that he served a One Month Notice to End Tenancy for Cause on October 22, 2020. He testified that it was served for several reasons, including repeated late payment of rent (the issue for which, he noted, would be dealt with on an expedited manner through the 10 Day Notices), for the tenant harassing staff, for videotaping the landlord's employees "all day long," for multiple police attendances, for complaints about drug use and so forth, for the tenant allegedly denying access for the landlord to make repairs, and, for "a bunch of [other] stuff."

The tenant and her husband (an advocate) testified about the entire 21-apartment property going "quickly downhill" after the landlord took ownership of the property in August 2020. They pointed out and argued that regarding the many allegations referenced in the One Month Notice by the landlord, they are "outrageous claims" with absolutely zero evidence. The tenant's advocate M. testified that their mailbox did not have a lock change as the other tenants had, and that their cheques were "taken from the mailbox," presumably as an explanation for why rent was not paid on time.

In closing, the tenant argued that she did "everything humanly possible to pay the rent." She then lapsed into a brief anecdote of having to keep her dead dog in the freezer because of issues she had with her front door. While the tenant voiced dissatisfaction with my limiting her testimony to matters relevant to the notices to end tenancy, I did not hear, and will not reproduce further, testimony on unrelated matters.

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

### **One Month Notice to End Tenancy for Cause**

Where a tenant applies to dispute a One Month Notice to End Tenancy for Cause, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the Notice is based.

While several grounds were listed on page two of the One Month Notice, other than the ground for repeated late rent payments, I am inclined to agree with the tenant: the landlord presented no evidence, documentary or otherwise (including any witnesses), to support a finding that any of those grounds existed which supports the issuing of the One Month Notice. As for the repeated late rent payments, I find that the outcome of this issue is resolved by way of the 10 Day Notices to End Tenancy, addressed below.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has not met the onus of proving any of the grounds on which the One Month Notice was issued. Consequently, I cancel the One Month Notice to end tenancy.

### **10 Day Notices to End Tenancy for Unpaid Rent**

Section 26 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or some of the rent. Pursuant to section 46 of the Act, the 10 Day Notices informed the tenant that the 10 Day Notices would be cancelled if they paid rent within five days of service.

The landlord testified, and provided documentary evidence to support their submission, that the tenant did not pay rent when it was due on December 1, 2020 and rent when it was due on January 1, 2021. Further, there is no evidence before me that the tenant had a right under the Act to not pay some or all of the rent.

Pursuant to section 46(1) of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice. In this dispute, the landlord issued two 10 Day Notices based on the fact that the tenant failed to pay rent when it was due.

Pursuant to section 55(2) of the Act:

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.

Here, I find that the 10 Day Notices complied with section 52 of the Act, and, I dismiss the tenant's application to cancel the 10 Day Notices. Thus, I grant the landlord an order of possession of the rental unit.

### Conclusion

**I dismiss the tenant's application.**

**I grant the landlord an order of possession, which must be served on the tenant and which is effective two (2) days from the date of service. This order may be filed in, and enforced as an order of, the Supreme Court of British Columbia.**

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: January 25, 2021

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Residential Tenancy Branch