



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Code: CNR

### Introduction

The tenant has applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent ("NTE") under section 46 of the *Residential Tenancy Act* ("Act"). It should be noted that the landlord issued a second 10 Day Notice to End Tenancy for Unpaid. This Decision will address both NTEs and both applications for dispute resolution.

Only the landlord attended the teleconference hearing on January 4, 2021. The tenant did not attend the hearing, which ended at 9:51 AM. The landlord gave evidence that she was never served with the Notice of Dispute Resolution Proceeding and only found out about this hearing on December 21, 2020.

### Issues

1. Is the tenant entitled to an order canceling the NTEs?
2. If not, is the landlord entitled to an order of possession?

### Background and Evidence

The tenancy began on April 15, 2020 and monthly rent is \$1,850. A security deposit of \$950 is in trust with the landlord. Rent was originally due at the end of the month, but by mutual agreement this was changed to rent being due on the first of the month.

On October 15, 2020 the landlord served the first NTE on the tenant. The tenant owed \$1,850 as of October 1. He then applied for dispute resolution on October 20, 2020. According to the landlord, the tenant paid \$925 toward November's rent on November 1, and then paid another \$925 toward November's rent on November 2. However, he still owed rent for October. The landlord testified that the tenant has failed to pay rent for December 2020. She issued a second NTE by way of registered mail on December 7, 2020. January's rent has, she added, also not been paid.

The tenant received this second NTE and has applied for a second application for dispute resolution on December 17, 2020, for a hearing scheduled for March 16, 2021. I note that the Residential Tenancy Branch emailed the tenant a Notice of Dispute Resolution Proceeding on December 24, 2020. However, the landlord testified that she is unaware that the tenant filed this second application.

There is in evidence a copy of the written tenancy agreement, along with copies of texts and emails between the parties. Copies of the NTEs are in evidence. Finally, there is a copy of a payment plan, dated October 25, 2020, in evidence, in which the tenant agreed to pay October's rent in full by November 30, 2020, which he has not. He also agreed in the payment plan to pay December's rent in full on time, which he has not. The landlord testified that she served copies of her documentary evidence on the tenant by way of registered mail. I am satisfied that this was done.

### 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.

Rent is due on the date or day of the month as required by a tenancy agreement. (See section 26 of the Act.) When a tenant does not pay rent then a landlord may issue a 10 Day Notice to End Tenancy for Unpaid Rent. (See section 46 of the Act.) However, pursuant to sections 3 and 4 of the *COVID-19 (Residential Tenancy Act and Manufactured Home Park Tenancy Act) (No. 3) Regulation*, a landlord cannot issue such a notice unless there is a repayment in place and the tenant "fails to pay an instalment on the date it is due."

In this dispute, the tenant and the landlord had a payment repayment plan in which the tenant was to repay October's rent by November 30, which he did not. As such, the landlord was permitted to issue the second NTE.

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 both NTEs comply with section 52 of the Act, and, I uphold both of the landlord's NTEs. Accordingly, taking into consideration all the undisputed oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenant has not met the onus of proving either application for an order to cancel the NTEs. His applications are therefore dismissed. Further, I grant the landlord an order of possession of the rental unit. A copy of this order will be issued in conjunction with this decision, to the landlord.

The hearing set for March 21, 2021 is cancelled.

### Conclusion

The tenants' applications are dismissed.

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 4, 2021

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Residential Tenancy Branch