



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR

### Introduction

This hearing convened as a result of the tenants' application for dispute resolution under the Residential Tenancy Act (Act) for:

- an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (10 Day Notice) issued by the landlord;

The tenants and the landlord attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter the participants were provided the opportunity to present their affirmed testimony and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

### Preliminary and Procedural Matters-

The landlord said that she had not been served the tenants' Application for Dispute Resolution, evidence, and Notice of Hearing (application package) and the only reason she knew to call into the hearing was due to a reminder email from the Residential Tenancy Branch (RTB).

The tenants confirmed not serving the landlord with their application package, due to an alleged payment plan agreement with the landlord.

Although the landlord was not served the application package by the tenants as required by the Rules and the Act, I determined that the hearing would proceed as the landlord appeared, was ready to proceed, and had submitted evidence in advance of the hearing.

Additionally, the tenants/applicants submitted evidence to the RTB, less than 14 days in advance of the hearing. The tenants confirmed not serving this evidence to the landlord, as required.

I have therefore excluded this evidence from consideration, as they failed to comply with their obligation under the Rules.

#### Issue(s) to be Decided

Are the tenants entitled to an order cancelling the 10 Day Notice?

#### Background and Evidence

The landlord submitted a partial copy of the written tenancy agreement and provided a signed copy to the tenants. The tenants denied ever receiving a copy of the written tenancy agreement.

The parties agreed on the basic tenancy details. This tenancy began on April 1, 2020 and monthly rent owed is \$2,075. When asked to confirm that they paid a security deposit of \$1,040, the tenants' response was vague.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Rules require the landlord to provide their evidence in support of the Notice first, as the landlord has the burden of proving sufficient cause to terminate the tenancy for the reasons given on the Notice.

The landlord's evidence was that the tenants were served with the 10 Day Notice on November 3, 2020, by personal service. The 10 Day Notice listed unpaid rent of \$1,175 owed as of November 1, 2020. The effective move-out date listed was November 13, 2020. Filed into evidence was a copy of that Notice.

The landlord submitted copies of other 10 Day Notices served on the tenants, one for September 2020 and one for October 2020. The monthly rent for September 2020 was paid on September 23, 2020, and the monthly rent for October 2020 was paid on October 21, 2020.

The landlord asserted that the tenants paid \$900 on November 1, 2020, were served the Notice, and since the issuance of the Notice, the tenants have paid the following payments towards the November rent:

November 10, 2020-\$400

November 24, 2020-\$400

December 8, 2020-\$400

The landlord submitted that the total paid for November 2020, was \$2,100, which left a surplus of \$25, to be applied to the outstanding pet damage deposit of \$1,035, owed at that time.

The landlord said that there was a settlement agreement in a prior dispute resolution hearing, on October 29, 2020, on the tenants' application seeking cancellation of an earlier 10 Day Notice issued by the landlord. The other arbitrator recorded the parties' settled agreement, in which, among other things, the tenants agreed to pay the remaining pet damage deposit to the landlord by making two installment payments, \$517.50 on November 15, 2020, and \$517.50 on December 15, 2020. The original arbitrator ordered the parties to comply with the terms of the settled agreement. Filed into evidence was a copy of the October 29, 2020, Decision of the other arbitrator.

The landlord confirmed that the tenants paid the December 2020, rent in advance, by making payments of \$850 on November 18 and \$1,225 on November 20, 2020.

The landlord mentioned that the tenants failed to pay the monthly rent for January 2021 and they have not yet paid the monthly rent due on February 1, 2021.

The landlord's additional relevant evidence included an email addressed to the landlord providing the tenants' offer of a payment plan for the outstanding monthly rent and the pet damage deposit.

*Tenants' response -*

The tenants confirmed the above payment amounts and payment dates as stated by the landlord and that they have made no further payments on monthly rent or the pet damage deposit since December 8, 2020.

The tenants agreed that they have not paid the January 2021 rent and that the monthly rent for February 2021 has not been paid yet, although they have the money to make both payments. The tenants claimed that they did not want to keep making payments if they were not being applied to the monthly rent and because they wanted to see what happened at the hearing today.

The tenant submitted that they have another hearing on the landlord's 10 Day Notice issued to them in January 2021, set for April 15, 2021.

The tenants referred to the landlord's evidence, to demonstrate that a payment plan was in place. This evidence was an email from the tenants sent to the landlord, with their offer. The proposed payment plan was to pay the rent deficiency of \$775 and the pet damage deposit of \$1,035 by making payments of \$400 on November 24, December 8, 2020, and January 5 and 19, 2021. A final payment of \$210 was to be made on February 2, 2021.

The landlord's emailed response was that this agreement was "solid and unchangeable".

### Analysis

I have reviewed the Notice and find it complies with section 52 *[form and content of notice to end tenancy]*.

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement, whether or not the landlord complies with the Act, and is not permitted to withhold rent without the legal right to do so. A legal right may include the landlord's consent for deduction; authorization from an Arbitrator or expenditures incurred to make an "emergency repair", as defined by the Act.

Pursuant to section 46(1) of the Act, when a tenant fails to pay rent when due, the landlord may serve the tenant with a 10 Day Notice for Unpaid Rent or Utilities. Upon receipt of the Notice, the tenant must pay the outstanding rent listed or file an application in dispute of the Notice within five (5) days.

When a Notice is disputed, the tenant must be able to demonstrate that they did not owe the landlord rent or had some other legal right to withhold rent.

Upon hearing from the parties, I find that the tenants owed the landlord the amount of rent listed on the Notice the day it was issued. The rent due listed on the Notice was not incurred during the Covid-19 emergency period and is not subject to the repayment plan under Section 1.02 of the *COVID-19 Regulation*.

While I recognize that the parties had an informal payment plan for the balance, the undisputed evidence is that the tenants have not complied with the repayments, as they only made the first two. I find this payment plan was only the tenants' acknowledgement that they would pay the amount of unpaid monthly rent and the pet damage deposit they owed. I find there was no agreement between the parties that the Notice would be cancelled even if the payments were made, which they have not been.

Apart from that, the tenants were not able to change the terms of their settled agreement from October 29, 2020, recorded in a Decision of another arbitrator on October 29, 2020. The arbitrator ordered the tenants to comply with the agreed upon payments for the pet damage deposit, which they have not done.

I find the evidence shows that the tenants have made a pattern of failing to comply with both their formal payment plan obligations, from the October 29, 2020, Decision, or their informal payment plan, even though by their own testimony, they have the money to pay.

For the above reasons, I find the tenants owed, but did not pay the outstanding unpaid rent deficiency within five days of receiving the Notice, nor did they make the payments as they said they would in an informal payment plan.

I therefore find the landlord submitted sufficient evidence to support the Notice and it must be upheld.

As a result, I dismiss the tenants' application seeking cancellation of the 10 Day Notice.

As such, I find that the landlord is entitled to and I therefore grant her an order of possession for the rental unit effective 2 days after service upon either of the tenants, pursuant to section 55(1)(b) of the Act. The order of possession is included with the landlord's Decision. Should the tenants fail to vacate the rental unit pursuant to the

terms of the order after it has been served upon either of them, this order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court.

The tenants are **cautioned** that costs of such enforcement, **such as bailiff fees**, are recoverable from the tenants.

### Conclusion

The tenants' application is dismissed, without leave to reapply, as I have upheld the 10 Day Notice, as I find it was valid and enforceable.

The landlord has been issued an order of possession for the rental unit, effective 2 days after it has been served on either of the tenants.

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: February 1, 2021

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Residential Tenancy Branch