



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Code: CNR

### Introduction

On December 11, 2020, the tenants applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") under section 46 of the *Residential Tenancy Act* ("Act").

Only the landlord's agent attended the hearing on March 8, 2021, which commenced at 11:00 AM. The tenants did not attend the hearing, which ended at 11:10 AM. No issues of service were raised, and the landlord confirmed they had provided copies of all of their documentary evidence to the tenants in early February 2021.

### Issues to be Decided

1. Are the tenants entitled to an order cancelling the Notice?
2. 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.

Monthly rent on the rental unit is \$1,863.00 and it is due on the first of the month.

On December 8, 2020 the landlord served the Notice on the tenants by leaving it in the mailbox. The Notice, a copy of which was in evidence, indicated that the tenants had not paid rent when it was due on the first of the month of December. Additional documentary evidence submitted by the landlord included a rent arrears spreadsheet, notices of rent increases, and a copy of the written residential tenancy agreement.

## Analysis

Section 26 of the Act states that

A tenant must pay rent when it is due under the tenancy agreement, whether or not 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.

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.

And, a notice must comply with section 52 of the Act. (Form and content of the notice.)

Section 46(4) of the Act requires a tenant who has received a notice under section 46(1) to either, within 5 after receiving the notice, (a) pay the overdue rent, or (b) dispute the notice by making an application for dispute resolution.

Section 55(1) 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.

Where a tenant applies to dispute a 10 Day Notice to End Tenancy for Unpaid Rent, the burden is on the landlord to prove, on a balance of probabilities, that the tenant did not pay rent in accordance with the tenancy agreement and the Act.

In this dispute, the landlord's undisputed evidence persuades me to find that the tenants did not and have not paid rent as required by the tenancy agreement. Further, having reviewed the Notice, I find that the Notice complies with section 52 of the Act.

Taking into consideration all the undisputed oral and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving the tenants did not pay rent in accordance with the tenancy agreement and the Act. I therefore uphold the Notice. The tenants' application to cancel the Notice is hereby dismissed, without leave to reapply.

Pursuant to section 55(1) of the Act I grant the landlord an order of possession of the rental unit. The order, which is issued in conjunction with this Decision to the landlord, must be served on the tenants.

As I briefly explained to the landlord's agent, they may make a separate application for dispute resolution seeking compensation for unpaid rent.

### Conclusion

I dismiss the tenants' application, without leave to reapply.

I hereby grant the landlord an order of possession, which must be served on the tenants 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 final and binding, except where permitted by the Act, and is made on authority delegated to me under section 9.1(1) of the Act.

Dated: March 8, 2021

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Residential Tenancy Branch