



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding METRO VANCOUVER HOUSING  
CORPORATION and [tenant name suppressed to protect privacy]

## DECISION

Dispute Codes      CNR, DRI, FFT

### Introduction

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* (the “Act”), they applied to dispute what they described as a “rent increase,” pursuant to sections 40 through 43 of the Act, and, they applied to recover the filing fee under section 72 of the Act.

Two agents for the landlord attended the hearing on March 9, 2021, which was held by teleconference and which commenced at 9:30 AM. Neither tenant attended the hearing which ended at 9:40 AM. No issues of service were raised by the landlord.

### Preliminary Issue: Landlord’s Exemption from Sections 41, 42, and 43 of the Act

At the outset, I note that sections 2 and 2(e) of the *Residential Tenancy Regulation*, B.C. Reg. 477/2003 specifically exempts the landlord, the Metro Vancouver Housing Corporation, from sections 41, 42, and 43 of the Act in respect of rent increases. These sections state that

Rental units operated by the following are exempt from the requirements of sections 34 (2), 41, 42 and 43 of the Act *[assignment and subletting, rent increases]* if the rent of the units is related to the tenant's income: [...] (e) Metro Vancouver Housing Corporation; [...]

Accordingly, this aspect of the tenants’ application is dismissed without leave to reapply. Further, because the landlord is exempt from rent increase provisions of the Act the tenants may not make any further applications for dispute resolution to dispute a rent increase for this reason.

### 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 of the rental unit?
3. Are the tenants entitled to recover the cost of the application filing fee?

### Background and Evidence

Relevant evidence, complying with the *Rules of Procedure*, was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the specific issues of this dispute, and to explain the decision, is reproduced below.

The landlord's agent (the "landlord") gave evidence that the current rent, which is calculated based on the tenants' incomes, is, and was, \$1,284.00 as of December 1, 2020. Rent is due on the first day of the month. The tenants failed to pay this amount of rent, and only paid \$624.00 on or before December 1, 2020.

On December 9, 2020 the landlord served the tenants with the Notice, a copy of which was submitted into evidence. The Notice was served by being posted on the door, which is a method of service permitted by section 88(g) of the Act. The Notice indicated, and the landlord confirmed in testimony, that the tenants owed rent in the amount of \$644.00 that was due on December 1, 2020. Since then, the tenants have continued to only pay about half the rent. As of today, the tenants are \$2,576.00 in arrears.

Additional documentary evidence submitted by the landlord included the following: the tenancy agreement, a revised income review letter, a letter sent to the tenant regarding their income review and notifying them that they no longer qualified for rental assistance, copies rent increase letters sent to the tenant in 2018, 2019, and 2020, a copy of the rent calculation document, and, a concise, well-written summary of the landlord's evidence.

### 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 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 met the onus of proving that the tenants did not pay rent in accordance with the tenancy agreement and the Act and I therefore uphold the Notice. Thus, the tenants' application is 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. Finally, the tenants' claim for recovery of the application filing fee is hereby dismissed, without leave to reapply.

Conclusion

I HEREBY

1. dismiss the tenants' application, without leave to reapply; and,
2. 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 otherwise permitted under the Act, and is made on authority delegated to me under section 9.1(1) of the Act.

Dated: March 9, 2021

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Residential Tenancy Branch