



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, OLC, MNDCT, LRE

### Introduction

The tenant filed an Application for Dispute Resolution (the “Application”) on December 2, 2020 seeking an order to cancel the 10 Day Notice to End Tenancy for Unpaid Rent (the “10-Day Notice”) that the landlord issued on November 27, 2020. Additionally, they applied for an order that the landlord comply with the legislation and/or tenancy agreement, a suspension or setting of conditions on the landlord’s right to enter, and compensation for monetary loss or other money owed.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on February 25, 2021.

Both parties attended the conference call hearing. The tenant attended with three witnesses with the intention that these witnesses would provide substantive testimony on the issues. I explained the process to all parties in attendance, and both parties had the opportunity to ask questions for clarification on the hearing process.

The tenant stated they provided their prepared documentary evidence directly to the landlord for their consideration. They did not provide evidence to the Residential Tenancy Branch in advance of the hearing. There is one single document provided by the tenant here, referenced below. I was unable to determine from the landlord whether they received documents from the tenant for this hearing.

The tenant confirmed they received the three documents prepared by the landlord for this hearing. The landlord provided them to the Residential Tenancy Branch prior to the hearing.

### Preliminary Matters

The *Residential Tenancy Branch Rules of Procedure* are in place to ensure a fair, efficient and consistent process for resolving disputes for landlords and tenants. At the outset of the hearing, I explained that this is a legal proceeding and it is governed by the *Rules*.

At the outset of the hearing, when reviewing the disclosure of evidence from each party, the tenant questioned the landlord's ability to provide evidence to the Residential Tenancy Branch in relatively short order prior to the hearing. The tenant said the landlord's evidence was submitted too late for consideration.

With reference to the *Rules*, I note Rule 3.15 specifies: ". . . the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing."

Based on the tenant's statement that they did receive pieces from the landlord, and the record on system showing the landlord submitted their material to the Residential Tenancy Branch on *February 17, 2021*, I find the timeline involved does not make the landlord's evidence late. The landlord's documents receive my consideration in this decision where it is necessary to do so.

The *Rules* also provide boundaries on parties' conduct within the hearing. Rule 6.10 states:

Disrupting the hearing will not be permitted. The arbitrator may give directions to any person in attendance at a hearing who is rude or hostile or acts inappropriately. A person who does not comply with the arbitrator's direction may be excluded from the dispute resolution hearing and the arbitrator may proceed in the absence of that excluded party.

From the beginning, the landlord disrupted the hearing by interrupting other parties when speaking. When asked to stop, the landlord turned on this Arbitrator to state that I was interrupting their speaking. I repeated to all parties in the hearing that there was a need for order so that I can properly ascertain each party's statements in relation to the issues. Despite clear instructions and commands to stop interrupting and act respectfully, the landlord refused to do so. This meant I had to mute their extension into the call twelve minutes into the hearing and they remained muted throughout the majority of the 36-minute-total hearing time.

The landlord was unable to answer direct questions, was aggressive and shouting to this Arbitrator in the hearing. This continued when unmuted and asked to respond to direct questions. I was only able to question the tenant directly and understand information about the dispute once the landlord was muted.

To a lesser extent, the tenant's witnesses also needed reminders about the need for no interruptions. They chose to respond to the landlord's statements directly and provided information without prompting or direction to do so. This also contributed to difficulty in managing the hearing. As a result, many irrelevant and unrelated pieces to the issues at hand were presented by one party, then immediately countered by the other. The tenant and their witnesses were more compliant and understanding with the direction; however, their contributions were unmeasured and not presented in linear fashion. In my summation, the landlord bears responsibility for making the hearing difficult to manage from all angles. I advised all attendees in this hearing that the constant interjections made it difficult to ascertain clear statements throughout.

I advised the parties that the primary issue was that of the validity of the 10-Day Notice issued by the landlord on November 27, 2020. Rule 2.3 provides that I may dismiss unrelated claims with or without leave to reapply. Rule 6.2 also provides authority for my severing of issues.

In line with the *Rules*, and with consideration to the each party's ability to present matters in a direct manner, I decline to hear the tenant's claims involving the landlord's right to enter the rental unit, the landlord's compliance with the *Act* and/or tenancy agreement, and compensation for monetary loss. These issues are dismissed; however, the tenant has leave to reapply.

#### Issue(s) to be Decided

Is the tenant entitled to an order that the landlord cancel the 10-Day Notice, pursuant to s. 46 of the *Act*?

If the tenant is unsuccessful in their Application, is the landlord entitled to an Order of Possession pursuant to s. 55 of the *Act*?

### Background and Evidence

Neither party submitted a copy of a tenancy agreement document. The landlord stated there was “really nothing” to such an agreement, and this rental unit was “off-grid . . . not like a real house.” There was no electricity, and no water in the rental unit. The tenancy, such as it is, started at “end of April 2020”, and both parties verified there was no paper agreement. The landlord provided that the tenant was to pay \$500 per month in rent, with a \$250 security deposit paid at the start of the tenancy.

In their written statement, the landlord stated that the tenant “had been paying \$500 per month for renting a cabin on my property.” In November 2020 the tenant paid only \$100 and nothing else.

The tenant provided that they found information about this cabin online. After “numerous telephone conversations” the landlord said the cabin was vacant. The tenant paid the initial amount of rent and the amount for the security deposit, and then came to the rental unit on May 15, 2020. They stated the tenancy was “month-to-month” as long as they wanted. They stated there was an agreement on these terms between the parties via email.

In the evidence is a copy of the document that the landlord issued on November 27, 2020. This was for unpaid rent in the amount of \$400 that was due on November 1, 2020.

The landlord provided the final move-out day on the 10-Day Notice as December 7, 2020. In the hearing, the tenant stated they vacated the rental unit on November 24, 2020. Their witness, unprompted, provided that the tenant continued to remain on the property.

At one point in the hearing, the landlord spoke of another structure present on the property; however, their statements were not clear on this point. The landlord’s written submission provides that the tenant remains on the property. This is “into a tiny house that people had abandoned, without my permission.”

### Analysis

The Act s. 46 provides 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. The effective date must not be earlier than 10 days after the date the tenant receives the 10-Day Notice. The document issued by the landlord must comply with the s. 52 pieces of form and content.

The rental unit referred to in the tenant's Application is that cabin that is on the landlord's residential property.

The tenant provided that they moved out of the rental unit on November 24, 2020. I find as fact this is the cabin that they had previously rented for \$500 per month.

The landlord provided evidence that the tenant remained on the property in a structure erected by previous occupants. The tenant's own witness at the end of the hearing stated at the end of the hearing that the tenant remains on the property, even at the time of the hearing.

The Act s. 1 contains the following definitions:

"rental unit" means living accommodation rented or intended to be rent to a tenant;

"residential property" means

- (a) a building, a part of a building or related group of buildings, in which one or more rental units or common areas are located,
- (b) the parcel or parcels on which the building, related group of buildings or common areas are located,
- (c) the rental unit and common areas, and
- (d) any other structure located on the parcel or parcels;

I find as fact that the tenant remains on the property. They vacated the rental unit cabin; however, they remain on the residential property. With reference to (d) above, the structure is located on the residential property. This means the tenant has not vacated. Because they remain on the residential property, I issue an Order of Possession to the landlord.

The landlord has met the burden of proof to establish that the tenant remains on the residential property without paying the correct amount of rent. The landlord is entitled to

an order of possession and the tenancy will end on the date specified on the Order of Possession.

### Conclusion

For the reasons above, I dismiss the tenant's Application for a cancellation of the 10-Day Notice, without leave to reapply.

I grant an Order of Possession effective April 9, 2021. Should the tenant fail to comply with this Order, the landlord may file this Order in the Supreme Court of British Columbia, where it may be enforced as an order of that court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: March 25, 2021

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Residential Tenancy Branch