



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      LAT, LRE, OLC, CNR, CNC, OLC, RP, LAT, LRE

### Introduction

This hearing dealt with the tenant's two application(s) pursuant to the *Residential Tenancy Act* (the "Act") for:

- authorization to change the locks to the rental unit pursuant to section 70;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70.
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;

and

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 32;
- authorization to change the locks to the rental unit pursuant to section 70;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70.

Both parties attended the hearing via conference call and provided testimony. Both parties confirmed the tenant served the landlord with the first notice of hearing package via Canada Post Registered Mail. The tenant stated that the 8 document files (copy of the signed tenancy agreement) was served in the notice of hearing package. The landlord stated that he thinks that he received the notice of hearing package but stated that he was unsure if any evidence was served. The landlord confirmed that no documentary evidence was submitted for this dispute.

On this issue, I find the landlord was properly served with the tenant's notice of hearing package and deem the landlord served with the submitted documentary evidence as the landlord was unsure if any evidence was served.

Both parties confirmed the tenant's second application (notice of hearing package) was served upon the landlord via Canada Post Registered Mail with the tenant's submitted 62 document evidence files. The landlord confirmed that no documentary evidence was submitted for this dispute.

After some lengthy discussions, the tenant's two applications were clarified as both contain duplicate requests. The tenant agreed that the first application filed contained duplicates in her second application and as such the first application could be withdrawn as it was unnecessary. The tenant's first application is considered withdrawn. The landlord confirmed his understanding.

Further discussions on the tenant's application clarified that the tenant's request for:

- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 32;
- authorization to change the locks to the rental unit pursuant to section 70;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70.

Were unrelated to the primary claims regarding possession. As such, RTB Rules of Procedure 2.3 states in part that "if in the course of a dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may dismiss unrelated disputes contained in a single application with or without leave to reapply." In this regard I find that the tenant has applied for an order for the landlord to comply with the Act, for an order for the landlord to make repairs, an order authorizing to change the locks and an order to suspend or set conditions on the landlord's right to enter the rental unit. The tenant provided testimony that these were unrelated issues to the 2 notice to end tenancies issued. As these sections of the tenant's application are unrelated to the main section which is to cancel the notice to end tenancy issued for unpaid rent and the notice to end tenancy issued for cause, I dismiss these sections of the tenant's claim with leave to reapply.

Extensive discussions over the period of the hearing resulted in the landlord clarifying that he had withdrawn the 1 month notice to end tenancy for cause. The landlord repeatedly stated that he had thought that he had cancelled the 1 month notice dated

January 18, 2021. The landlord was asked if he had given notice to the tenant cancelling the 1 month notice. The landlord stated that he thought that he had posted a letter on the tenant's door cancelling the 1 month notice dated January 18, 2021. The tenant responded stating that at no time was such a letter received. The landlord was questioned if he understood what it meant to cancel the 1 month notice. The landlord responded that he did. The landlord was asked if he still wished to cancel the 1 month notice dated January 18, 2021 and no longer wished to pursue it. The landlord confirmed that he wished to cancel it as he has also applied for an expedited hearing set for another date. On this basis, the landlord was allowed to cancel the 1 month notice dated January 18, 2021.

The hearing shall proceed on the only remaining issue of the tenant's request to cancel the 10 Day Notice for Unpaid Rent.

#### Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 10 Day Notice?

#### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

Both parties confirmed the landlord served the tenant with a 10 Day Notice for Unpaid Rent dated January 18, 2021 with a stated effective end of tenancy date of January 18, 2021. Both parties were advised that the effective end of tenancy date was incorrect and would be corrected to January 28, 2021 for the purposes of this notice. The 10 Day Notice states the tenant failed to pay rent of \$701.00 that was due on January 1, 2021 and that the tenant failed to pay utilities of \$161.68 after a written demand to do so was given.

The tenant argued that the January 2021 rent of \$700.00 was sent via etransfer to the landlord but was returned as "refused" by the landlord. The tenant stated that the January 2021 rent was sent on December 23, 2020. The landlord disputes this claim stating that no such payment was "refused". The landlord stated that the payment was "withdrawn" by the tenant and as such the landlord was unable to collect the rent. The landlord however stated that a late partial payment was made on January 5, 2021 leaving rental arrears of \$447.40. The tenant argued that the landlord's partial payment was her February 2021 rent payment made in advance and that the shortage was

because of the unpaid utilities. The tenant was asked if she had any supporting evidence of her January 2021 rent payment made on December 23, 2020 or that it was returned as “refused”. The tenant stated that she did not any supporting evidence.

### Analysis

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

In this case, I accept the undisputed affirmed evidence of both parties and find that the tenant was served with eh 10 Day Notice dated January 18, 2021.

Despite the effective end of tenancy date being incorrectly dated as January 18, 2021, I find that the 10 Day Notice is valid.

The landlord provided affirmed testimony that a partial rent payment was made on January 5, 2021 leaving rental arrears totalling \$447.40. I find that although the tenant argued that her initial etranser payment on December 23, 2020 was “refused”, the landlord has disputed this claiming that it was “withdrawn”. The tenant failed to provide any supporting evidence of this payment on December 23, 2020 or of it being “refused”. I also find on a balance of probabilities that it is highly unlikely that if this had occurred that the tenant would instead make an advance payment for February 2021 rent on January 5, 2021. The tenant again failed to provide any supporting evidence of an advance payment for February 2021 rent.

As such, I find that the tenant’s application to cancel the 10 Day Notice is dismissed. Pursuant to section 55 of the Act, the landlord is entitled to an order of possession to be effective 2 days after it is served upon the tenant.

### Conclusion

The landlord is granted an order of possession for unpaid rent.

This order must be served upon the tenant. Should the tenant fail to comply with this order, the order may be filed in the Supreme Court of British Columbia and 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: March 02, 2021

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Residential Tenancy Branch