



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes: CNC CNR

### Introduction

The tenants applied to cancel a One Month Notice to End Tenancy for Cause ("One Month Notice") and they applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") under sections 46 and 47 of the *Residential Tenancy Act* ("Act").

Only the landlord attended the hearing on March 30, 2021, which began at 9:30 AM and ended at 9:44 AM. I affirmed the landlord before hearing and considering any evidence.

### Issues

1. Are the tenants entitled to an order cancelling either notice to end tenancy?
2. If not, is the landlord entitled to an order of possession of the rental unit?

### 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 tenancy began on March 28, 2021 and monthly rent, which is due on the first day of the month, is \$1,200.00. The tenants paid a security deposit of \$600.00. A copy of a tenancy agreement was in evidence. (I note that the tenants' applications contained the name of a minor child, who is not a tenant for the purposes of the tenancy; I have amended the applications accordingly.)

The landlord testified that they served the 10 Day Notice on February 2, 2021 on the tenants by posting it on the door of the rental unit. Service was witnessed by a third party. A copy of the 10 Day Notice was submitted into evidence and it indicated, and the landlord confirmed, that rent in the amount of \$1,212.50 was due on February 1, 2021. Rent was not paid.

## 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.

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

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 pay rent in the amount of \$1,212.50 on February 1, 2021, as is required by the

tenancy agreement. Further, having reviewed the 10 Day Notice, I find that the 10 Day 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 10 Day Notice. Thus, the tenants' application in respect of the 10 Day Notice 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 in order for it to be enforceable in court.

Having issued an order of possession in respect of the 10 Day Notice, I need not consider the merits of the One Month Notice; that application is dismissed.

### Conclusion

**I dismiss the tenants' applications, without leave to reapply.**

**I 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 made on authority delegated to me under section 9.1(1) of the Act.

Dated: March 30, 2021