



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNR

### Introduction

The tenants had applied to dispute a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) pursuant to section 46 of the *Residential Tenancy Act* (“Act”).

The tenants attended the hearing on June 22, 2021 at 1:30 PM. The landlord did not attend the hearing, which ended at 1:37 PM. It should be noted that the tenants provided documentary evidence of having attempted to serve the landlord with a Notice of Dispute Resolution Proceeding, which the landlord refused to accept.

### Preliminary Issue 1: Tenancy Has Ended

In respect of this application, the tenants testified that they vacated the rental unit on May 24, 2021. There were various issues that caused them to move out.

Given that the tenancy has ended, the issue of whether the Notice is to be upheld or cancelled is now moot. Accordingly, this application will be marked as being dismissed, without leave to reapply.

### Preliminary Issue 2: Return of Security and Pet Damage Deposit

The tenants testified that the landlord refused to accept their forwarding address and has not returned either a \$600 security deposit or a \$600 pet damage deposit.

Regarding this, the tenants are directed to the three-page information sheet (“The Tenant’s Direct Request Process for Return of a Security Deposit and/or Pet Damage Deposit”) available online at <https://www2.gov.bc.ca/assets/gov/housing-and-tenancy/residential-tenancies/information-sheets/rtb131.pdf>. If the tenants have any questions about this, they are encouraged to contact the Residential Tenancy Branch. Contact information is on the last page of the information sheet.

On this note, the landlord is cautioned that failure to return the tenants' deposits, after receiving the tenants' forwarding address, may result in the tenants being awarded double the amount of the deposits, for a total of \$2,400.00. This amount does not include filing fees, or any court costs associated with the tenants' enforcing a monetary order in the Provincial Court of British Columbia. Last, refusing to accept Canada Post registered mail does not permit a landlord to claim that they were not served.

### Preliminary Issue 3: Unlawful Tenancy Agreement

The tenants submitted into evidence a copy of the written tenancy agreement. This is a highly unusual, and in fact, largely legally unenforceable document that fails to comply with the Act in many respects.

The tenancy agreement does not include the tenants' names, the term of the tenancy, the amount of rent, or the amount of the security deposit. And section 12 of the tenancy agreement is unenforceable: a landlord has no legal right to restrict a tenant from having guests, including from having overnight guests.

Last, section 15 of the agreement reads as follows (reproduced as written):

The BC Residential Tenancy Act does NOT apply, this is the only contract that is valid and agreed on by both parties.

To be blunt, this term of the tenancy agreement is absurd, and it carries no legal force. A landlord entering into a tenancy with a tenant, except where the rental accommodation falls within the exceptions listed in section 4 of the Act, is legally bound by the *Residential Tenancy Act* and the *Residential Tenancy Regulation*. Indeed, to make this point as clearly as possible, [section 5](#) of the Act states:

- (1) Landlords and tenants may not avoid or contract out of this Act or the regulations.
- (2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.

The landlord is strongly cautioned that any such terms, including the previously noted ones, are contrary to the Act, and that a tenant is not required to comply with any such term. Moreover, a tenant may apply to the Residential Tenancy Branch for injunctive or monetary relief where a landlord attempts to enforce such terms.

Conclusion

As noted above, the tenants' application is dismissed, without leave to reapply.

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: June 22, 2021

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Residential Tenancy Branch