



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding NVision Property Management  
Ltd and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      **CNR, AS**

### Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (“Ten Day Notice”) pursuant to section 46;
- An order to allow an assignment or sublet when permission has been unreasonably denied pursuant to section 65;

Tenant PP attended the hearing and explained that the other named tenants are minor children. The agent SC appeared for the landlord (“the landlord”).

Both parties attended the hearing and had opportunity to provide affirmed testimony, present evidence and make submissions. No issues of service were raised. The hearing process was explained.

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the parties were informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the *Act*. The parties had no

questions about my direction pursuant to RTB Rule 6.11.

In addition, the parties confirmed their email addresses at the outset of the hearing and stated that they understood that the decision and any applicable orders would be emailed to them.

### *Preliminary Issue – Tenant's Claim*

The tenant's application included unrelated claims in addition to the tenant's application to dispute the landlord's 10 Day Notice and the tenant's request for more time to apply to dispute the 10 Day Notice.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure states that claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

I find that the tenant's primary application pertains to disputing a notice to end tenancy, therefore, I find that the additional claims are not related to whether or not the tenancy continues. Therefore, all of the tenant's claims except for her applications to dispute the landlord's 10 Day Notice are dismissed, and I grant the tenant liberty to reapply for these claims subject to any applicable limits set out in the *Act*, should the tenancy continue.

### Issue(s) to be Decided

Is the tenant entitled to an Order cancelling the Ten-Day Notice? Is the landlord entitled to an Order of Possession? Is the landlord entitled to a Monetary Order for outstanding rent?

### Background and Evidence

A copy of the tenancy agreement was submitted as evidence. The named tenants are the tenant and her spouse who has vacated the unit. The tenant occupies the unit with her two young children.

The landlord and tenant agreed on the background to the tenancy summarized as follows:

INFORMATION	DETAILS
Type of tenancy currently	Monthly
Date of beginning	December 2018
Date of ending	Ongoing
Monthly rent payable on 1 <sup>st</sup>	\$2,280.00
Security deposit	\$1,090.00
Pet deposit	None
Outstanding rent at time of hearing	\$11,705.00
Outstanding utilities	Not claimed

The parties agreed that the landlord issued a Ten-Day Notice for non-payment of rent in the RTB form, a copy of which was submitted. The parties agreed to the following particulars:

ITEM	DETAILS
Date of Ten-Day Notice	March 15, 2021
Method of Service	Posting to unit March 15, 2021
Effective date of Service (per section 90 RTA)	March 18, 2021
Rent paid in full within five days of service	No
Application for Dispute Resolution to cancel the Ten-Day Notice	March 19, 2021

The Ten-Day Notice included the following provision:

*You have 5 days to pay rent and/or utilities to the landlord or file an Application for Dispute Resolution with the Residential Tenancy Branch online, in person at any Service BC Office or by going to the Residential Tenancy Branch Office at*

*#400 - 5021 Kingsway in Burnaby. If you do not apply within the required time limit, you are presumed to accept that the tenancy is ending and must move out of the rental unit by the effective date of this Notice.*

The landlord testified that the tenant did not pay the outstanding rent in full within five days and continued to occupy the unit. The landlord submitted supporting documentary evidence to establish the amount of rent owed. The tenant testified that the landlord's evidence was correct, and the tenant acknowledged outstanding rent in the amount claimed.

However, the tenant explained that she expected to soon receive significant support income from her estranged spouse to assist in paying arrears and keeping up with the payments.

The parties agreed the tenant continues to occupy the unit.

The landlord requested a 2-day Order of Possession and a Monetary Order as set out above.

The tenant requested the Ten-Day Notice be cancelled.

### Analysis

I have reviewed all documentary evidence and testimony.

I find the form and content of the Notice complies with section 52 of the *Act*.

I find the tenant was served with the Ten-Day Notice on March 18, 2021 as testified by the landlord and acknowledged by the tenant in accordance with sections 88 and 90 of the *Act*.

As acknowledged by the tenant, I find the tenant did not pay the overdue rent in full within 5 days and \$11,705.00 is currently owing.

The tenant's explanation for failing to pay rent because of unreceived expected income is not a valid reason to cancel the Ten-Day Notice.

Section 26(1) of the *Act* states as follows:

**26** (1) *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.*

I find the tenant's application to cancel the Ten-Day Notice is without merit. Accordingly, I dismiss the tenant's application without leave to reapply.

Section 55(1) of the Act states as follows:

*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.*

I have dismissed the tenant's application and upheld the landlord's Ten-Day Notice. As the tenant continues to occupy the unit, I find the landlord is entitled to an Order of Possession under section 55, effective two days after service of the Order.

I find the landlord is entitled to a Monetary Order in the amount of \$11,705.00 being the amount of outstanding rent agreed by the parties and supported by the landlord's evidence.

### Conclusion

The tenant's application to cancel a Ten-Day Notice is dismissed without leave to reapply. The tenant's application under section 65 is dismissed with leave to reapply.

I grant the landlord an Order of Possession effective two days after service on the tenant.

This Order of Possession must be served on the tenant. If the tenant fails to comply with this Order, the landlord may file the order with the Supreme Court of British Columbia to be enforced as an order of that Court.

I also grant the landlord a Monetary Order for outstanding rent in the amount of \$11,705.00.

This Order must be served on the tenant. If the tenant fails to comply with this Order, the landlord may file and enforce the Order in the Courts of British Columbia.

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: July 04, 2021

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Residential Tenancy Branch