



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNR

### Introduction

The Tenants seek an order pursuant to s. 46 of the *Residential Tenancy Act* (the “Act”) cancelling a 10-Day Notice to End Tenancy signed on December 31, 2022 (the “10-Day Notice”).

M.L. and R.G. appeared as the Tenants. M.W. appeared as the Landlord.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Tenants advise that they served their application and evidence on the Landlord. The Landlord acknowledged receipt of the Tenants’ application materials without objection. Based on the Landlord’s acknowledged receipt of the Tenants’ application materials without objection, I find that pursuant to s. 71(2) of the *Act* that Tenants’ application materials were sufficiently served with the Landlord.

The Landlord confirmed that he did not serve evidence in response to the Tenant’s application.

### Issues to be Decided

- 1) Should the 10-Day Notice be cancelled?
- 2) If not, is the Landlord entitled to an order of possession?
- 3) Is the Landlord entitled to an order for unpaid rent?

### Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

The parties confirmed the following aspects with respect to the tenancy:

- The Tenants took occupancy of the rental unit on August 1, 2022.
- Rent of \$3,200.00 is due on the first of each month.
- The Tenants paid a security deposit of \$1,600.00 to the Landlord.

The Tenants provide a copy of the tenancy agreement in their evidence.

The Landlord advises that he served the 10-Day Notice on the Tenants on December 31, 2022 by way of pre-agreed email. The Tenants acknowledge receiving the 10-Day Notice on December 31, 2022 and confirm having given their email to the Landlord as an approved address for service.

A copy of the 10-Day Notice was put into evidence by the Tenants. In it, it lists that the Tenants' failed to pay \$3,200.00 in rent on December 1, 2022 and lists January 13, 2023 as its effective date.

The Landlord advises that his wife gave rent receipts to the Tenants in November 2022 on the understanding that they would be applying for a rental subsidy. He further testifies that rent was unpaid on December 1, 2022 and was notified by the Tenants that they would be able to make payment on December 21, 2022. No payments were made on that date. The Landlord says he was further told by the Tenants that their bank account had been frozen due to issues of fraud. It was after this point that the Landlord says he notified the Tenants that he would have to issue a notice to end tenancy for unpaid rent.

The Landlord testifies that rent for January 1, 2023 was unpaid and that he received a payment of \$400.00 on January 5, 2023 and another payment of \$2,000.00 on January 18, 2023. According to the Landlord, total rent owed as at the date of the hearing is \$4,000.00.

The Tenants confirm that they failed to pay rent on December 1, 2023 and January 1, 2023 and that they made two partial payments as described by the Landlord. The Tenants explain that they are facing financial difficulties at the present time.

The parties confirm the Tenants continue to reside within the rental unit.

### Analysis

The Tenants seek an order cancelling the 10-Day Notice.

Pursuant to s. 46(1) of the *Act*, where a tenant fails to pay rent when it is due, a landlord may elect to end the tenancy by issuing a notice to end tenancy that is effective no sooner than 10-days after it is received by the tenant. Pursuant to s. 46(4) of the *Act*, a tenant has 5-days from received a 10-day notice to end tenancy to either pay the overdue rent or file an application to dispute the notice. If a tenant files to dispute the notice, the burden of proving it was issued in compliance with s. 46 of the *Act* rests with the respondent landlord.

As per s. 46(2) of the *Act*, all notices issued under s. 46 must comply with the form and content requirements set by s. 52 of the *Act*. I have reviewed the 10-Day Notice and find that it complies with the formal requirements of s. 52 of the *Act*. It is signed and dated by the Landlord, states the address for the rental unit, states the correct effective date, sets out the grounds for ending the tenancy, and is in the approved form (RTB-30).

Based on the testimony of the parties, I find that the 10-Day Notice was served via email in accordance with s. 88 of the *Act* and s. 43 of the Regulations. I further find that Tenants received the 10-Day Notice on December 31, 2022 as confirmed by them at the hearing.

I accept the undisputed evidence of the parties that the Tenants failed to pay rent on December 1, 2022 and January 1, 2023. I further accept the undisputed evidence of the parties that the Tenants made partial payment on rent on January 5, 2023 in the amount of \$400.00 and January 18, 2023 in the amount of \$2,000.00.

Pursuant to s. 26(1) of the *Act*, a tenant must pay rent when it is due whether or not the landlord complies with the *Act*, the Regulations, or the tenancy agreement unless the *Act* grants the tenant the right to deduct all or a portion of the rent. The *Act* proscribes a

set of limited circumstances in which monies claimed by the Tenant can be deducted from rent, which include:

1. Where a tenant has paid a security deposit or pet damage deposit above that allowed by s. 19(1), then the amount that was overpaid may be deducted from rent (see s. 19(2)).
2. The reimbursement of costs borne by a tenant for emergency repairs after the process contemplated by s. 33(5) have been followed (see s. 33(8)).
3. Where a landlord collects rent following a rent increase that does not comply with the amount proscribed by the regulations, then the tenant may deduct the overpayment from rent (see s. 43(5)).
4. As ordered by the Director pursuant to ss. 65 and 72.

In this instance, none of the above circumstances are applicable her. The Tenants admit to having failed to pay rent on December 1, 2022. They confirm the first payments made to the Landlord as listed above. In other words, they failed to pay the arrears listed within the 10-Day Notice within 5 days of receiving it on December 31, 2022. Though I empathize with the Tenants' financial difficulties, those are not relevant considerations under the *Act*. Accordingly, I find that the 10-Day Notice was properly issued. The Tenants' application to cancel the 10-Day Notice is hereby dismissed.

Section 55(1) of the *Act* provides that where a tenant's application to cancel a notice to end tenancy is dismissed and the notice complies with s. 52, then I must grant the landlord an order for possession. As that is the case here, I hereby grant the Landlord an order of possession.

Pursuant to s. 55(1.1) of the *Act*, if a tenant's application to cancel a notice to end tenancy for unpaid rent is dismissed and the notice complies with the formal requirements of s. 52, then the Director must grant an order for unpaid rent. In accordance with Policy Guideline 3, an order for unpaid rent is limited to rent owed during the tenancy and does not include compensation for an overholding tenant. Where a tenant continues to reside in the rental unit and is unsuccessful in disputing a notice to end tenancy at the hearing, as has occurred here, the tenancy ends on the date of the tenant's hearing as ordered by the Director in accordance with s. 68(2) of the *Act*. Accordingly, I find that the tenancy has ended on January 27, 2023. I further accept the undisputed evidence of the parties that the Tenants owe the Landlord \$4,000.00 in unpaid rent (((\$3,200 x 2) - \$400.00 - \$2,000.00). Pursuant to s. 55(1.1) of the *Act*, I order the Tenants pay the Landlord \$4,000.00 in unpaid rent.

### Conclusion

The Tenants' application to cancel the 10-Day Notice is dismissed without leave to reapply.

The Landlord is entitled to an order of possession pursuant to s. 55(1) of the *Act*. The Tenants shall give vacant possession of the rental unit to the Landlord within **two (2) days** of receiving the order of possession.

The Landlord is entitled to an order for unpaid rent pursuant to s. 55(1.1) of the *Act*. I order that the Tenants pay the Landlord **\$4,000.00** in unpaid rent.

It is the Landlord's obligation to serve the order of possession and the monetary order on the Tenants. If the Tenants do not comply with the monetary order, it may be filed by the Landlord with the Small Claims Division of the Provincial Court and enforced as an order of that Court. If the Tenants do not comply with the order of possession, it may be filed by the Landlord with 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: January 27, 2023

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Residential Tenancy Branch