



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      CNR, PSF, LRE, OLC, FFT

### Introduction

This hearing was convened in response to the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

The tenant requested:

- cancellation of the landlords' 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- an order requiring the landlords to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- authorization to recover the filing fee for this application, pursuant to section 72.

At the outset of the hearing, I explained to the parties that as these hearings were teleconferences, the parties could not see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so.

All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation. All parties acknowledged the evidence submitted and were given an

opportunity to be heard, to present sworn testimony, and to make submissions. I explained the hearing and settlement processes to both parties. Both parties had an opportunity to ask questions. Both parties confirmed that they were ready to proceed with the hearing, they did not want to settle this application, and they wanted me to make a decision regarding this application. Neither party made any adjournment or accommodation requests. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Issue(s) to be Decided

Should the 10 Day Notice be cancelled. If not, is the landlord entitled to an order of possession?

Is the tenant entitled to an order to have the landlord comply with the Act, regulation or tenancy agreement?

Should an order be given to have the landlord provide services or facilities?

Should an order be given to limit or suspend the landlords right to enter the rental unit?

Is the tenant entitled to the recovery of the filing fee for this application?

#### Background and Evidence

The landlord gave the following testimony. The landlord testified that the tenancy began on December 1, 2020. The monthly rent of \$3500.00 is due on the first of the month. The landlord testified that the tenant started only paying half the rent as of February 2022. The landlord testified that he issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on October 10, 2022. The landlord testified that the tenant stopped paying any rent as of November 2022. The landlord testified that as of today's hearing the tenant owes him \$29,750.00. The landlord testified that there was no agreement to reduce the rent to \$1750.00 as the tenant alleges.

The tenant gave the following testimony. The tenant testified that the home is dilapidated and in need of many repairs. The tenant testified that the landlord was aware that he was subletting part of the property to help pay the rent. The tenant testified that the parties agreed verbally in February 2022, to allow the tenant to only pay \$1750.00 because he didn't have anyone subletting from him and that the property needed significant repairs. The tenant testified that he stopped paying the rent since November 2022.

## Analysis

Section 26 of the Act addresses the issue before me as follows.

### **Rules about payment and non-payment of rent**

**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.

In the tenants own affirmed testimony he has confirmed that he stopped paying the rent since receiving the notice to end tenancy. Section 46 of the Act addresses the matter as follows:

Section 46(1) of the Act states the following (my emphasis added):

*Landlord's notice: non-payment of rent*

*46(1) 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.*

### 10 Day Notice

According to subsection 46(4) of the *Act*, a tenant may dispute a 10 Day Notice by making an application for dispute resolution within five days after the date the tenant received the notice. The tenant confirmed that he received the 10 Day Notice on October 10, 2022. Although the tenant disputed the notice within five days, the tenant did not pay the rent due within five days as required by the notice and confirmed that he has not paid rent since receiving the notice.

In accordance with section 46(5) of the *Act*, the failure of the tenant to pay the full rent within five days led to the end of this tenancy on October 20, 2022, the corrected effective date of the notice. In this case, this required the tenant and anyone on the premises to vacate the premises by October 20, 2022. Based on the above, I hereby dismiss the tenant's application to dismiss the notice.

Section 55(1) of the *Act* reads as follows:

***55 (1) 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.***

As noted above, I have dismissed the tenant's application. I find that the landlord's 10 Day Notice complies with section 52 of the *Act*. Accordingly, I find that the landlord is entitled to an Order of Possession effective two (2) days after service on the tenant.

The landlord is at liberty to file an application seeking a monetary order for unpaid rent.

### Conclusion

The tenant's entire application is dismissed without leave to reapply.

I grant an Order of Possession to the landlord effective two (2) days after service on the tenant. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court 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: February 27, 2023

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Residential Tenancy Branch