



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 087957 BC LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR, FF

### Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the Act) for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46; and
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

Both tenants attended the hearing. The landlord's agent attended the hearing. Those in attendance were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

### Preliminary Issue – Service

The landlord admitted service of the tenants' dispute resolution package.

The tenant PJ testified that he served the landlord with the tenants' evidence by mail on 27 April 2016. Pursuant to rule 3.14 of the Residential Tenancy Branch Rules of Procedure (the Rules) this evidence is late. The landlord's agent consented to my consideration of the evidence. As the landlord consented, this evidence is admitted.

The landlord provided its evidence to the tenants on 27 April 2016. Pursuant to rule 3.15 of the Rules, this evidence is late. The tenants consented to my consideration of the evidence. As the tenants consented, this evidence is admitted.

Both the landlord and tenants did not refer to all of the documentary evidence submitted by way of their testimony or submission. Pursuant to rule 7.4 of the Rules, I have only considered the evidence presented at the hearing by the parties.

The agent testified that the landlord served the tenants with the 10 Day Notice on 4 April 2016 by posting it to the tenants' door. The tenants admitted service.

### Issue(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an order of possession? Are the tenants entitled to recover the filing fee for this application from the landlord?

### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the tenants' claim and my findings around it are set out below.

This tenancy began 1 February 2015. The parties entered into a written tenancy agreement on 31 January 2015. Monthly rent under the tenancy agreement was \$1,250.00 and due on the first. The landlord continues to hold the tenants' security deposit in the amount of \$475.00.

On or about 5 June 2015, the landlord agreed to reduce rent to \$950.00 monthly.

On 4 April 2016, the landlord served the tenants with the 10 Day Notice. The 10 Day Notice was dated 4 April 2016 and set out an effective date of 15 April 2016. The 10 Day Notice set out that the tenants had failed to pay rent in the amount of \$6,225.00, which was due 1 April 2016.

The agent testified that the landlord has not received any payment since October 2015.

There are no prior orders of the Residential Tenancy Branch in respect of this tenancy. The landlord has not raised rent in the course of the tenancy. The landlord has not issued a 2 Month Notice to End Tenancy for Landlord's Use. There are no outstanding amounts owed to the tenants for emergency repairs.

The tenant PJ testified that he paid a previous agent of the landlord \$4,000.00 in cash in September 2015. The tenant PJ submits that at this time, rent was "caught up" and that the tenants had overpaid by the equivalent of one month's rent. The tenant PJ testified that the agent did not provide a receipt. The tenant PJ testified to various deficiencies with the rental unit. The tenant PJ submitted that the tenants could not pay rent because the landlord's agents would not attend to collect it.

The landlord provided a ledger that sets out \$6,225.00 in rent arrears:

Item	Amount
June Rent Arrears	\$50.00

October Rent Arrears	475.00
November Rent Arrears	950.00
December Rent Arrears	950.00
January Rent Arrears	950.00
February Rent Arrears	950.00
March Rent Arrears	950.00
April Rent Arrears	950.00
<b>Total Rent Arrears</b>	<b>\$6,225.00</b>

### Analysis

Subsection 26(1) of the Act sets out:

A tenant must pay rent when it is due under the tenancy agreement....unless the tenant has a right under this Act to deduct all or a portion of the rent.

On the basis of the evidence provided by the parties, I find that monthly rent in the amount of \$950.00 was due on the first.

There are five provisions in the Act that permit a tenant to deduct amounts from rent:

- Subsection 19(2) permits a tenant to deduct amounts from rent to recover the excess amounts of a security deposit that did not comply with the Act.
- Subsection 33(7) permits a tenant to deduct amounts from rent for the costs of emergency repairs.
- Subsection 43(5) permits a tenant to deduct the amount of a rent increase which did not comply with the Act from rent.
- Subsection 51(1.1) permits a tenant to deduct one month rent where the landlord has issued a notice to end tenancy pursuant to section 49.
- Subsection 65(1) and subsection 72(2) permit a tenant to deduct rent to recover an amount awarded in an application before this Branch.

Neither party has provided any evidence to show that the tenants were entitled to deduct any amount from rent. There is no basis under the Act for a tenant to deduct amounts because of deficiencies in the rental unit.

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

The tenant PJ testified that the tenants paid rent in the amount of \$4,000.00 in September. The tenant PJ testified that this amount would have brought the tenants current for rent owed to the end of October 2015. The tenants did not provide evidence that they paid any amount towards rent for November, December, January, February, March, or April. On the basis of this admission by tenant I find at the 10 Day Notice was served the tenants were in substantial arrears of at least \$5,700.00. The tenants did not attempt to pay any amount towards this arrears amount. The tenants had the

landlord's address for service and could, at any time, have delivered payment for their rent arrears to that address in order to cancel the 10 Day Notice. The tenants failed to do so.

As the tenants have failed to pay their rent in full when due, I find that the 10 Day Notice issued 4 April 2016 is valid and dismiss the tenants' application to cancel the 10 Day Notice. As the tenant's application to cancel the 10 Day Notice is dismissed, the landlord was entitled to possession of the rental unit on 17 April 2016, the corrected effective date of the 10 Day Notice. The landlord is entitled to an order of possession effective two days after it is served upon the tenants.

As the tenants have not been successful in this application, they are not entitled to recovery their filing fee from the landlord.

### Conclusion

The tenants' application is dismissed.

The landlord is provided with a formal copy of an order of possession. Should the tenant(s) 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 subsection 9.1(1) of the Act.

Dated: April 29, 2016

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Residential Tenancy Branch