



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNR, AAT, FF

### Introduction

This hearing dealt with the tenant's 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;
- authorization to change the locks to the rental unit pursuant to section 70; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

This hearing under section 82(2)(c) of the *Act* was convened on the basis of a March 19, 2012 Review Consideration Decision of a Dispute Resolution Officer (DRO). In that decision, the DRO considered the tenant's application to review an initial DRO's March 13, 2012 decision (the original decision) to dismiss the tenant's application to cancel a 10 Day Notice and to issue an Order of Possession to the landlord.

The reviewing DRO examined the tenant's application for review consideration on the basis of the tenant's claim that he had new and relevant evidence that was not available at the time of the original hearing. He could not determine from the wording of the original decision if the information presented by the tenant as new and relevant evidence and the rent receipts were new or relevant. He found that "in the interests of administrative fairness a new hearing must be granted that will for both parties to provide any and all evidence relevant to the case." In his decision, the reviewing DRO suspended the original decision until such time as the new hearing has been completed and a decision is given to the parties in accordance with section 81(3) of the *Act*.

The Respondent (the landlord) appeared at the date and time set for the hearing of this matter. The Applicant did not, although I waited until 3:18 p.m. to enable him to connect with this teleconference hearing scheduled for 3:00 p.m.

At the hearing, the landlord requested an Order of Possession if the tenants' application for cancellation of the 10 Day Notice to End Tenancy were dismissed.

### Background and Evidence

According to the terms of the residential tenancy agreement entered into written evidence, monthly rent for this tenancy was set at \$750.00 plus \$30.00 for parking, payable in advance on the first of each month. The landlord continues to hold the tenant's \$375.00 security deposit.

The landlord testified that the tenant may have abandoned the rental unit as he has removed many of his belongings in the week prior to this hearing. She testified that there was an incident on April 4, 2012 requiring the attendance of the police at the tenant's rental unit. She said that some of the tenant's possessions remain in the rental unit, but most appear to have been removed.

The landlord submitted written evidence that she posted a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on the tenant's door at 11:40 a.m. on February 23, 2012. She entered into written evidence a witnessed statement to that effect.

The landlord gave sworn testimony that the tenant has not paid any portion of the \$596.00 identified as outstanding rent in the 10 Day Notice, nor has he made any payments for March or April 2012. The landlord's agent testified that the effective date of the 10 Day Notice was March 4, 2012.

As neither party had submitted a copy of the 10 Day Notice into written evidence, I asked the landlord to fax a copy of the 10 Day Notice to the Residential Tenancy Branch (RTB) shortly after the completion of the hearing. I made this request as the landlord had entered into written evidence a copy of a February 27, 2012 Notice to the tenant. This typed notice advised the tenant to vacate the rental premises by March 1, 2012 for a number of reasons, including the non-payment of rent. As the landlord did not use a standard RTB Form for this Notice, I needed to ensure that the landlord was entitled to an Order of Possession on the basis of a properly issued 10 Day Notice to end this tenancy. The landlord's agent subsequently faxed a copy of the properly issued 10 Day Notice to the RTB within the next hour.

### Analysis

Rule 10.1 of the Rules of Procedure provides as follows:

***10.1 Commencement of the hearing*** *The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.*

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 an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*

*(a) the landlord makes an oral request for an order of possession, and*

*(b) the director dismisses the tenant's application or upholds the landlord's notice.*

**In the absence of the applicant's participation in this hearing, I order the tenant's application dismissed without liberty to reapply.**

Based on my decision to dismiss the tenants' application for dispute resolution, I find that the landlord submitted sufficient oral and written evidence to demonstrate that the 10 Day Notice issued to the tenant on February 23, 2012 was valid and that the tenant has not paid rent identified as owing in that 10 Day Notice.

In accordance with section 82(3) of the *Act*, I vary the original decision and order of March 13, 2012 as follows. I dismiss the tenant's application without leave to reapply for the reasons outlined above. I find that this tenancy ended on March 6, 2012, the corrected effective date of the 10 Day Notice. In accordance with section 55(1) of the *Act*, I allow the landlord's oral request for an Order of Possession.

#### Conclusion

I dismiss the tenants' application for dispute resolution without leave to reapply. I provide the landlord with a formal copy of an Order of Possession to take effect within 2 days of the landlord's service of this notice to the tenant. Should the tenant 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: April 16, 2012

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Residential Tenancy Branch