



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes

CNR

### Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) that was filed by the Tenant under the *Residential Tenancy Act* (the “Act”), seeking cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”).

I note that section 55 of the *Act* requires that when a tenant submits an Application seeking to cancel a notice to end tenancy issued by a landlord, I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with section 52 of the *Act*.

The hearing was convened by telephone conference call and was attended by the agent for the Landlord (the “Agent”), and the Tenant, both of whom provided affirmed testimony. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. Neither party raised any concerns regarding the service of documentary evidence.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”); however, I refer only to the relevant facts and issues in this decision.

### Issue(s) to be Decided

Is the Tenant entitled to cancellation of the 10 Day Notice?

If the Tenant is unsuccessful in cancelling the 10 Day Notice, is the Landlord entitled to an Order of Possession pursuant to section 55 of the *Act*?

### Background and Evidence

The parties confirmed that the month-to-month tenancy began on August 1, 2017, that rent in the amount of \$750.00 is due on the first day of each month, and that a security deposit in the amount of \$325.00 was paid.

The Agent testified that as of March 2, 2018, the Tenant owed \$1,500.00 in outstanding rent for January and March of 2018. As a result, the Agent testified that a 10 Day Notice was posted to the door of the Tenant's rental unit on March 12, 2018. In the hearing the Tenant acknowledged that she received the 10 Day Notice on March 13, 2018.

The 10 Day Notice in the documentary evidence before me, dated March 12, 2018, has an effective vacancy date of March 22, 2018, and states that as of March 1, 2018, the Tenant owed \$1,500.00 in outstanding rent. The Agent testified that as of the date of the hearing, the Tenant owes four months of rent for January, March, April, and May of 2018, and the Tenant acknowledged that she has not paid any rent since the issuance of the 10 Day notice. In any event, the Tenant also acknowledged that she did not file her Application seeking cancellation of the 10 Day Notice until March 22, 2018.

### Analysis

I have reviewed all relevant documentary evidence and oral testimony and in accordance with section 81 of the *Act*, I find that the Tenant was served with the 10 Day Notice on March 13, 2018, the date she acknowledged receiving it.

Section 46(4) of the *Act* states that within five (5) days after receiving a 10 Day Notice, the tenant may pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution. In the hearing the Tenant testified that she received the 10 Day Notice on March 13, 2018, that she filed her Application on March 22, 2018, and that she has made no rent payments since receipt of the 10 Day Notice.

Based on the above, I find that the Tenant neither paid the overdue rent listed on the 10 Day Notice nor filed an Application seeking to dispute the 10 Day Notice within the five (5) day time limit specified under section 46(4) of the *Act*. There is also no evidence before me that the Tenant applied for more time to make her late Application. Section 46(5) of the *Act* states that if a tenant who has received a 10 Day Notice does not pay the rent or make an Application in accordance with subsection (4), the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date.

As a result, I find that the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the 10 Day Notice, March 22, 2018, and that the tenancy therefore

ended on that date. As a result, her Application seeking cancellation of the 10 Day Notice is therefore dismissed without leave to reapply.

Having made the above finding, I must now turn my mind to whether the Landlord is entitled to an Order of Possession pursuant to section 55 of the *Act*. As the 10 Day Notice, is signed and dated by the Agent for the Landlord, gives the address for the rental unit, states the effective date of the notice and the reason for ending the tenancy, and is in the approved form, I find that it complies with section 52 of the *Act*. Based on the above, the Landlord is therefore entitled to an Order of Possession. As the effective date of the 10 Day Notice has passed and the Agent testified that the Tenant currently owes four months of outstanding rent, the Order of Possession will be effective two days after service of the Order on the Tenant.

### Conclusion

The Tenant's Application seeking cancellation of the 10 Day Notice is dismissed without leave to reapply.

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant. The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in 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: June 6, 2018

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Residential Tenancy Branch