



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPRM FFL  
                                CNR

### Introduction

This is an Application for Dispute Resolution (the “Application”) brought by the Tenant requesting cancellation of a 20-Day Notice to End Tenancy for Unpaid Rent and a cross-application by the Landlord for an Order for Possession, a Monetary Order for payment of arrears and reimbursement of the filing fee.

The Landlord and Tenant appeared for the scheduled hearing. I find that the notice of hearing for each application was properly served and that evidence was submitted by all parties. Although all evidence was taken into consideration at the hearing, only that which was relevant to the issues is considered and discussed in this decision.

The hearing process was explained and parties were given an opportunity to ask any questions about the process. The parties were given a full opportunity to present affirmed evidence, make submissions, and to cross-examine the other party on the relevant evidence provided in this hearing.

### Issues to be Decided

Is the Tenant entitled to a cancellation of the 10-Day Notice to End Tenancy for Unpaid Rent dated April 23, 2018, pursuant to section 46 of the Residential Tenancy Act (“Act”)?

If not, is the Landlord entitled to an Order for Possession pursuant to section 55 of the Act?

Is the Landlord entitled to a Monetary Order for payment of rent arrears, pursuant to section 67 of the Act?

Is the Landlord entitled to payment of the filing fee of \$100.00, pursuant to section 72 of the Act?

### Background and Evidence

The tenancy began February 27, 2017 for a one-year fixed term, reverting to a month-to-month tenancy thereafter. Monthly rent was set at \$1,290.00, payable on the 27<sup>th</sup> day of each month, with a \$675.00 security deposit paid. A copy of the agreement signed by the Tenant was submitted into evidence.

The Tenant was unable to pay the July, August and September 2017 rent due to a loss of employment. She tried to arrange to make up payments through the sale of an asset and by obtaining other temporary employment. She was able to pay back a portion of the arrears in November 2017, but again missed the March, April and May 2018 rent, aside from a \$300.00 payment received May 3, 2018. The Landlord provided a ledger showing payments and the amount owing in the sum of \$6,140.00. The Tenant does not deny that she owes the rent.

The Landlord states that he has attempted several times to work with the Tenant to resolve the issue of the outstanding rent, but the Tenant always has a reason why she cannot pay. He served a 10-Day Notice to End Tenancy on April 24 by posting it on the Tenant's door; the Notice included an effective vacancy date of May 4, 2018 for \$5,160.00 in unpaid rent.

### Analysis

A landlord may serve notice to end tenancy under section 46 of the Act, if a tenant falls behind in 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.*

(2) *A notice under this section must comply with section 52 [form and content of notice to end tenancy].*

*(3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.*

*(4) Within 5 days after receiving a notice under this section, the tenant may*

*(a) pay the overdue rent, in which case the notice has no effect, or*

*(b) dispute the notice by making an application for dispute resolution.*

*(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant*

*(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and*

*(b) must vacate the rental unit to which the notice relates by that date.*

I have reviewed the 10-Day Notice to End Tenancy and find that it meets the form and requirements of section 52 of the Act; it was deemed received on the third day, April 26, pursuant to sections 90 and 88 of the Act. The Tenant disputed the Notice on April 30<sup>th</sup>, within the required deadline. Therefore, I turn my attention to the validity of the Notice to End Tenancy.

The Landlord presented a ledger showing payments owing and received throughout the tenancy; the Tenant did not dispute the amount owing, once the amounts were confirmed. The Landlord also submitted several text messages and emails between the parties showing attempts made by the Tenant to catch up the arrears. She was unable to pay up the arrears and fell further behind due to her difficult personal circumstances. She has found a new job and a new place to live but is still waiting for confirmation that the old tenants have vacated before she can move in. There was an attempt to mediate a settlement between the parties, however, the specific terms could not be agreed upon.

I find that the Landlord has met the burden of proof and that the 10-Day Notice is valid. Accordingly, the Tenant's application to cancel the Notice is denied. I find that the Landlord is entitled to an Order of Possession.

The Landlord has filed a monetary claim for payment of the arrears in rent. I am satisfied that the rent in the sum of \$6,140.00 is currently outstanding and an order will be issued for payment by the Tenant. As the Landlord was successful in this application for possession, I am also prepared to award the filing fee of \$100.00.

This order must be served on the Tenant and may then be filed in the Small Claims Division of the Provincial Court and enforced as an order of that court if the Tenant fails to make payment. Copies of this order are attached to the Landlord's copy of this Decision.

### Conclusion

I grant an Order of Possession to the Landlord effective **two days after service of this Order** on 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.

I further grant an Order for payment of \$6,240.00 to the Landlord by the Tenant forthwith.

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 5, 2018

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Residential Tenancy Branch