



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR

### Introduction

This is an Application for Dispute Resolution (the “Application”) brought by the Tenant requesting a cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent.

The Tenant and Landlord appeared for the scheduled hearing; the Landlord was represented by her son (hereinafter referred to as “Landlord”). I find that the notice of hearing was properly served and that evidence was submitted by all parties.

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.

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.

### Issues to be Decided

Is the Tenant entitled to a cancellation of the Notice to End Tenancy, 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?

### Background and Evidence

This tenancy began July 1, 2012 for a monthly rent of \$650.00. A security deposit of \$325.00 was paid. The latest rent increase to \$710.00 was on August 1, 2017.

The Landlord had previously served a 10 Day Notice to End Tenancy for Unpaid Rent and had obtained an Order for Possession on January 5, 2017, but chose not to enforce it. The Landlord states that the Tenant owed for four months of rent and that total arrears were \$2,840.00 as at May 3, 2018. As of the hearing date, the Tenant owes \$710.00 for each of February, March, April, May, June and July; this was not disputed by the Tenant.

The Landlord served the current 10 Day Notice to End Tenancy for Unpaid rent dated May 3, 2018 on that same day by posting it to the Tenant's door; a witness statement as provided as proof of service. The Tenant filed a dispute application on May 11, 2018.

The Tenant states that he suffered from health issues and that the issues are now controlled and he is back working. He indicated a plan to repay the arrears and to have the Ministry pay the rent directly to the Landlord in the future, who he indicated has treated him very kindly. He indicated a strong desire to repay the amounts owing.

The Landlord asks for a 48 hour Order for Possession but also indicated a desire to work directly with the Tenant to pay the arrears and get a new tenancy agreement in place for ongoing rent. In the event that the Tenant is again unable to follow through on payments, the Landlord intends to end the tenancy.

### Analysis

Under the section 90 of the Act, the service of the Notice is deemed to be on the 3<sup>rd</sup> day after posting it on the door; accordingly, I find that the Tenant was deemed served on May 6, 2018. From that date, he had 5 days to pay the arrears or file a dispute application. His application was filed on May 11, 2018, within the required deadline.

When a tenant applies to dispute a 10 Day Notice to End Tenancy, the onus of proof falls to the landlord to prove the grounds upon which the notice is based, on a balance of probabilities. I have reviewed the Notice and find that it complies with section 52 in form and in content. Based on the evidence before me, I find that the Landlord has shown that the Tenant owed \$2,840.00 as of the date of the Notice, and now a total of

\$4,260.00 to the date of the hearing. Accordingly, the Tenant's Application to cancel the Notice is dismissed.

Section 55(1) of the *Act* states that if a tenant makes an Application to dispute a Notice the Arbitrator **must** grant an Order of Possession if the Notice complies with the Act and the Tenant's application is dismissed. As I have made a finding that the Notice complies with section 52 of the Act and the Tenants' Application to the cancel the Notice is dismissed, the Landlord must be granted an Order of Possession.

This order will be effective two days after service upon the Tenant by the Landlord. The Tenant must be served with a copy of the order and this may be enforced through the Supreme Court of British Columbia. Copies of this order are attached to the Landlord's copy of this decision.

### Conclusion

For the reasons set out above, the Tenant's Application to cancel the 10-Day Notice to End Tenancy is hereby dismissed without leave to re-apply.

I hereby grant an Order of Possession in favour of the Landlord effective two days after service upon the Tenant. This order is final and binding on the parties and may be enforced in the Supreme Court of British Columbia as an order of that court should the tenant fail to comply with it.

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: July 12, 2018

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Residential Tenancy Branch