



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNR, MNRT

### Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- An order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent (“Ten-Day Notice”) pursuant to Section 46(4); and
- An order for reimbursement of the cost of emergency repairs pursuant to section 33(5).

This hearing also dealt with a cross-application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- An order of possession under section 46;
- A monetary order for outstanding rent under section 67; and
- An order for reimbursement of the cost of the filing fee pursuant to section 72.

The landlord appeared at the hearing and provided affirmed testimony. The landlord was given the opportunity to make submissions as well as present oral and written evidence.

The tenant did not appear at the hearing. I kept the teleconference line open from the time the hearing was scheduled for an additional fifteen minutes, to allow the tenant the opportunity to call. The teleconference system indicated only the landlord and I had

called into the hearing. I confirmed the correct participant code for the tenant had been provided.

The landlord testified he served the Notice of Hearing and Application for Dispute Resolution upon the tenant by sending copies to him by registered mail on July 27, 2018. I find the tenant was served five days after mailing on August 1, 2018 under sections 89 and 90.

The landlord stated the tenant left copies of the tenant's Notice of Hearing and Application for Dispute Resolution on July 22, 2018 at the landlord's home. This does not meet service required under section 89 of the *Act*.

While the Rules of Procedure provide in section 3.5 that an applicant must be prepared to demonstrate to the satisfaction of the Arbitrator that the respondent was served with the originating documents, Rule 7.3 provides as follows:

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

Section 71(2)(b) of the *Act* states:

**71** (2) In addition to the authority under subsection (1), the director may make any of the following orders:

...

(b) that a document has been sufficiently served for the purposes of this *Act* on a date the director specifies;

As the landlord appeared at the hearing, acknowledged receipt of the documents and waived his right to service under section 89, I find the landlord was sufficiently served with the Notice of Hearing and Application for Dispute Resolution for the tenant's application under section 71(1)(2).

Accordingly, pursuant to Rule 7.3, I ordered the hearing proceed with respect to both claims.

The landlord withdrew his request for a monetary order for outstanding rent under section 67 and reimbursement of the filing fee under section 72.

Section 55 of the *Act* requires, when a tenant submits an Application for Dispute Resolution 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 in compliance with the *Act*.

#### Issue(s) to be Decided

- Is the tenant entitled to cancellation of the Ten-Day Notice pursuant to section 46;
- Is the tenant entitled to an order for compensation for the cost of emergency repairs pursuant to section 33(5); and
- Is the landlord entitled to an order of possession pursuant to section 55.

#### Background and Evidence

In the absence of the tenant, the landlord provided uncontradicted affirmed testimony regarding the tenancy.

The landlord testified he entered into a 1-year fixed term tenancy agreement with the tenant beginning July 1, 2017 which continued thereafter as a month-to-month tenancy. Rent is \$1,300.00 a month payable on the first of the month. The tenants provided a security deposit in the amount of \$650.00 at the beginning of the tenancy which is held by the landlord.

A copy of the tenancy agreement was submitted in evidence by the landlord.

The landlord provided uncontradicted testimony that \$3,900.00 rent is owing by the tenant. The tenant has not paid rent for the months of July, August and September 2018.

The landlord testified the tenant continues to occupy the unit.

The landlord testified he issued a Ten-Day Notice on July 22, 2018 and personally served the Ten-Day Notice on the tenant that day. The landlord stated the tenant did not pay rent within the 5-day period.

The tenant filed an Application for Dispute Resolution on July 27, 2018 for which the hearing is scheduled today disputing the Ten-Day Notice. The landlord filed an Application for Dispute Resolution on July 29, 2018 for an order of possession.

A copy of the Ten-Day Notice was submitted as evidence.

### Analysis

I have reviewed all documentary evidence and testimony.

I am satisfied the form and content of the Ten-Day Notice complies with Section 52 of the *Act*. I find the tenant was served with the Ten-Day Notice on July 22, 2018 in accordance with Section 88 of the *Act*.

I find the tenant did not pay the overdue rent by July 27, 2018 within the five-day period following service. I find the tenant applied for dispute resolution on July 27, 2018.

As the tenant failed to appear at this hearing, I dismiss the tenant's request to cancel the Ten-Day Notice without leave to reapply.

Pursuant to Section 55(1), the director **must** grant to the landlord an order of possession of the rental unit if the landlord's notice to end tenancy complies with Section 52 and the tenants' application is dismissed.

I therefore grant the landlord an order of possession.

As no evidence has been submitted with respect to the tenant's claim for compensation of the cost of emergency repairs under section 33(5), I dismiss this claim without leave to reapply.

Conclusion

The tenant's claims are dismissed without leave to reapply.

I grant the landlord an order of possession which is effective two days after service on the tenant.

This order must be served on the tenant.

If the tenant fails to comply with this order, the landlord may file the order with the Supreme Court of British Columbia to be 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: September 21, 2018

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Residential Tenancy Branch