



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNR, FFL

### Introduction

The tenant seeks an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) under section 46 of the *Residential Tenancy Act* (the “Act”), and compensation for the cost of the filing fee under section 72 (1) of the Act.

The tenant applied for dispute resolution on March 14, 2019 and a dispute resolution hearing was held on May 6, 2019. The tenant and the landlord attended the hearing, and they were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The landlord raised an issue regarding the service of evidence, which I will address in the preliminary issue section, below.

I have reviewed and considered evidence submitted that met the requirements of the *Rules of Procedure*, and to which I was referred, but I have only addressed the evidence and arguments to the extent necessary to explain my decision.

Further, I note that section 55 of the Act requires that when a tenant applies 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’s notice to end tenancy complies with the Act.

### Issues

1. Is the tenant entitled to an order cancelling the Notice?
2. If not, is the landlord entitled to an order of possession?
3. Is the tenant entitled to recovery of the filing fee?

### Preliminary Issue: Tenant's Service of Evidence

The landlord testified that he did not receive a copy of the tenant's documentary evidence until two days before the hearing, on May 3, 2019. I note there is a letter from the landlord to the Residential Tenancy Branch, dated April 25, 2019, in which the landlord explains that he had not received copies of the tenant's evidence and that he requests copies of the evidence.

Rule 3.14 of the *Rules of Procedure*, under the Act, states that

Documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC Office not less than 14 days before the hearing. In the event that a piece of evidence is not available when the applicant submits and serves their evidence, the arbitrator will apply Rule 3.17.

Rule 3.17 permits the late submission of evidence only where the submitting party can show that the evidence "is new and relevant evidence and that it was not available at the time that their application was made or when they served and submitted their evidence."

In this case, the tenant did not respond to or deny the landlord's submissions regarding her late submission and service of evidence. Further, there is no evidence before me to find that the late submitted evidence was not available at the time that the tenant made her application. Based on the above, I conclude that the tenant failed to serve her evidence on the landlord in accordance with the *Rules of Procedure* and as such I will not consider her documentary evidence in this decision. (That having been said, if I had accepted her evidence, the outcome would not have been materially different.)

### Background and Evidence

The landlord testified that the tenancy began on September 1, 2016. Monthly rent is currently \$1,100.00, due on the first of the month. In addition, the tenant is supposed to pay \$100.00 a month for utilities. The tenant paid a security deposit of \$725.00. A copy of the written tenancy agreement was submitted into evidence.

On March 10, 2019, the landlord served the Notice on the tenant in person for \$3,300.00 in overdue rent that was owing as of March 1, 2019. A copy of the Notice was

submitted into evidence, along with a Proof of Service document that supports the landlord's testimony that service occurred at 4:15 PM on March 10, 2019. Service was witnessed by a third party.

As of today, the tenant is in arrears in the amount of \$3,500.00, which comprises overdue rent and utilities of \$2,300.00, and overdue rent and utilities in the amount of \$1,200.00 for May 2019.

The tenant is a single mother with a low income and works many graveyard shifts. Her financial situation is not good, and she struggles to put food on the table and pay the rent. Given the low paycheques, she testified that she arranged with the landlord to pay him portions of the rent that she can afford, when she gets paid.

For May 2019, she testified that she paid \$600.00 toward the rent "last week" (that is, April 29 to May 3) and that her next paycheque of \$600.00 will be issued on May 10.

In rebuttal, the landlord testified that while he agreed to temporary partial payments to accommodate her, the tenant remains behind on rent. He pleads with the tenant during text messages to "please pay on time." For May 2019, he testified that the tenant has not paid anything for May's rent, and at this point it is already 6 days late.

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Where a tenant applies to dispute a notice to end tenancy, the onus is on the landlord to prove, on a balance of probabilities, the ground on which the notice was issued. Here, the Notice was issued because the tenant failed to pay rent when it was due.

Section 26 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or some of the rent. Pursuant to section 46 of the Act, the Notice informed the tenant that the Notice would be cancelled if they paid rent within five days of service. The Notice also explains that the tenant had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution.

The landlord testified, and provided documentary evidence to support their submission, that the tenant did not pay rent when it was due.

Whether the tenant's payment of \$600.00 at the end of April 2019 is for May's rent or not is a rather moot point: the tenant testified that she has not paid all the rent for May 2019 when it was due and does not plan on paying anything else until at least May 10, 2019. Finally, there is no evidence before me that the tenant had a right under the Act to not pay the rent.

I note that while the landlord agreed to temporarily allow the tenant to pay rent in portions, he at no point agreed to keep letting the tenant pay rent late time and again. At some point—March 10, 2019 to be exact—the landlord exercised his right to be paid rent by the tenant. The tenant was legally obligated by the tenancy agreement to pay full rent on time.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving the ground on which the Notice was issued. As such, I dismiss the tenant's application to cancel the Notice.

Section 55 (1) of the Act states that if a tenant applies to dispute a landlord's notice to end tenancy and their Application for Dispute Resolution is dismissed or the landlord's notice is upheld the landlord must be granted an order of possession if the notice complies with all the requirements of Section 52 of the Act.

Section 52 of the Act requires that any notice to end tenancy issued by a landlord must (1) be signed and dated by the landlord, (2) give the address of the rental unit, (3) state the effective date of the notice, (4) state the grounds for ending the tenancy, and (5) be in the approved form. Having reviewed the Notice, I conclude that it complies with the requirements set out in section 52.

Accordingly, I grant an order of possession to the landlord.

Section 72(1) of the Act provides that an arbitrator may order payment of a fee under section 59(2)(c) by one party to a dispute resolution proceeding to another party. A successful party is generally entitled to recovery of the filing fee. As the applicant was unsuccessful I dismiss her claim for reimbursement of the filing fee.

Conclusion

I dismiss the tenant's application without leave to reapply.

I grant the landlord an order of possession, which must be served on the tenant and is effective two days from the date of service. This order may be filed in, 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 Act.

Dated: May 6, 2019

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Residential Tenancy Branch