



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 1161137 BC LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR

### Introduction

In this dispute, the landlord, a numbered company, sought an order of possession for unpaid rent pursuant to sections 46 and 55 of the *Residential Tenancy Act* (the “Act”).

The landlord applied for dispute resolution on October 25, 2019 and a dispute resolution hearing was held on December 16, 2019. The landlord’s representative (the “landlord”) attended, was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The tenant did not attend.

The landlord testified that they served a Notice of Dispute Resolution Proceeding on the tenant by way of registered mail on November 4, 2019. Based on the undisputed testimony of the landlord I find that the tenant was served pursuant to sections 59(3) and 89(2)(b).

I have reviewed evidence submitted that met the *Rules of Procedure* and to which I was referred but have only considered evidence relevant to the issues of this application.

### Issue

Is the landlord entitled to an order of possession?

### Background and Evidence

The landlord testified that the tenancy was assigned to him when he purchased the property (the rental unit) in July 2018. The tenant was previously in the rental unit. Monthly rent was \$4,000.00 and the tenant did not pay a security or pet damage deposit.

On October 22, 2019, the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") by way of registered mail. The Notice indicated that a total of \$18,000.00 in rent arrears was owed by the tenant as of October 1, 2019.

The landlord submitted a copy of the Notice and the Canada Post registered mail receipt (with a photo of a smiling Leonard Cohen behind) and a tracking number into evidence.

The landlord testified that the tenant has not responded to the landlord's efforts to collect rent and that the tenant has not made any attempt to pay rent.

### 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.

Section 46 of the Act states that

- (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]*. [. . .]
- (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.

In this dispute, the landlord ended the tenancy by giving the Notice. Having reviewed the Notice I find that it complies with section 52 of the Act. The tenant did not pay the rent and did not dispute the notice by making an application for dispute resolution.

Given that the tenant did not pay the rent or make an application for dispute resolution in accordance with subsection (4), I find that the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice (in this case, November 7, 2019; the Notice was mailed on October 22, 2019, and section 90(a) of the Act deems the Notice to have been received on the fifth day after it is mailed).

Section 55(2)(b) of the Act states that a landlord may request an order of possession of a rental unit when “a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired.”

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 their claim for an order of possession. The Notice was given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution, and the time for making that application has expired. Thus, I grant the landlord an order of possession pursuant to section 55(3) of the Act.

### Conclusion

I hereby grant the landlord an order of possession, which must be served on the tenant and is effective two (2) 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 under section 9.1(1) of the Act.

Dated: December 16, 2019