



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** *CNR, OLC, DRI, CNC, MNR, MNDC, LRE, LAT, RR, FF*

### **Introduction**

This hearing dealt with an application by the tenant pursuant to sections 43, 47, 46, 67, 62, 70, 65 and 72 of the *Residential Tenancy Act*. The tenant applied for an order to set aside notices to end tenancy for nonpayment of rent and for cause. The tenant also applied for a host of other remedies.

Both parties attended this hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The parties represented themselves. The landlord was accompanied by her agent.

As both parties were in attendance, I confirmed service of documents. The tenant confirmed receipt of the landlord's evidence and stated that she did not serve her evidence on the landlord. Accordingly, the tenant's evidence was not used in the making of this decision. I find that the tenant was served with evidentiary materials in accordance with sections 88 and 89 of the *Act*.

RTB Rules of Procedure 2.3 states that if in the course of a dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may dismiss unrelated disputes contained in a single application with or without leave to reapply. In this regard I find the tenant has applied for multiple remedies that are unrelated to the main section which is to cancel the ten-day notice to end tenancy.

In addition, the tenant's documents filed into evidence cannot be used in the making of this decision, because she did not serve her evidentiary materials on the landlord. Therefore, I dismiss the sections that are unrelated to the main claim, with leave to reapply.

Accordingly, this hearing only dealt with the tenant's application to set aside the notice to end tenancy.

### **Issue to be Decided**

Does the landlord have grounds to end this tenancy?

### **Background and Evidence**

The parties could not agree on the date that the tenancy began and the amount of rent payable. The tenant stated that the tenancy began in November 2018 with \$1,200.00 for rent while the landlord stated it began in November 2019 with \$1,500.00 for rent. In the absence of a written tenancy agreement, I am unable to determine the date the tenancy started and the rental amount.

The parties agreed that the tenant was served with a ten-day notice to end tenancy for nonpayment of rent in the amount of \$3,000.00, on October 10, 2020. The tenant disputed the notice in a timely manner.

The tenant agreed that she made a rental payment of \$2,500.00 on May 26, 2020 and then the next time she paid rent was on December 01, 2020 in the amount of \$1,450.00. The tenant also agreed that she owed as of the date of this hearing. The landlord requested an order of possession effective two days after service on the tenant.

### **Analysis**

Based on the sworn testimony of both parties, I find that the tenant received the notice to end tenancy for unpaid rent, on October 10, 2020 and applied to dispute the notice within the legislated time frame of five days.

Even though the tenant made application to dispute the notice to end tenancy within five days, I must uphold the notice because the tenant did not pay rent within five days of receiving the notice to end tenancy and the time to do so has expired.

In these situations, the *Residential Tenancy Act* provides that the tenant has been deemed to have accepted the end of the tenancy, on the date set out in the notice and must vacate the rental unit by that date. Accordingly, the notice to end tenancy is upheld and therefore the tenant's application to cancel the notice is dismissed.

During the hearing the landlord made a request under section 55 of the legislation for an order of possession effective immediately. Section 55 of the *Residential Tenancy Act* addresses an order of possession for the landlord and states:

**55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

(a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

In this case, I find that the landlord served the tenant with a notice to end tenancy that complies with section 52 (form and content of notice to end tenancy). Since the tenant did not pay rent within five days of receiving the notice and still owes rent at the time of this hearing, I have dismissed the tenant's application for dispute resolution and have upheld the notice to end tenancy.

Under the provisions of section 55, I must issue an order of possession when I have upheld a notice to end tenancy. Accordingly, I so order. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court. The tenant has not proven her case and must bear the cost of filing her applications.

### **Conclusion**

The notice to end tenancy is upheld and I grant the landlord an order of possession effective two days after service on the tenant.

The remainder of the tenant's application is dismissed with leave to reapply.

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: December 04, 2020

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Residential Tenancy Branch