



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Powell holdings Ltd  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      For the tenant: CNC-MT  
For the landlord: OPR-DR

### Introduction

This hearing was convened as the result of the separate and unrelated applications of the parties for dispute resolution seeking remedy under the Residential Tenancy Act (Act).

The tenant applied for the following:

- an order cancelling the One Month Notice to End Tenancy for Cause (One Month Notice) issued by the landlord; and
- an order extending the time to file an application disputing the Notice issued by the landlord.

The landlord applied for the following:

- an order of possession of the rental unit pursuant to a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (10 Day Notice) served to the tenant.

This landlord's dispute began as an application via the ex-parte Direct Request process and was adjourned to a participatory hearing based on the Interim Decision by an adjudicator with the Residential Tenancy Branch (RTB), dated January 7, 2021, which should be read in conjunction with this decision.

At the participatory hearing, the landlord's agent (landlord) attended the teleconference hearing. The tenant did not attend the hearing.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (Notice of Hearing), application and documentary evidence was considered.

The landlord testified that the tenant was served the Notice of Reconvened Hearing, the interim decision, and all other required documents by registered mail on January 8, 2021.

The landlord submitted that they originally served the Notice of a Dispute Resolution Hearing and all Direct Request documents to the tenant by registered mail on December 17, 2020.

Based on the landlord's undisputed testimony and documentary evidence, I accept that the tenant was sufficiently served the landlord's application and hearing documents as required under section 89(1) of the Act and the hearing proceeded in the tenant's absence.

During the hearing the landlord was given the opportunity to provide her evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

#### Preliminary and Procedural Matters

Despite having his own hearing scheduled for 9:30 a.m. on February 2, 2021, and the landlord's application and notice of hearing, the tenant failed to attend the hearing.

Rules 7.3 and 7.4 of the Rules of Procedure provides as follows:

#### **7.3 Consequences of not attending the hearing**

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.

#### **7.4 Evidence must be presented**

Evidence must be presented by the party who submitted it, or by the party's agent.

If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

Accordingly, in the absence of any evidence or submissions from the tenant, I order his application dismissed, **without leave to reapply**.

The hearing proceeded on the landlord's request for an order of possession of the rental unit.

#### Issue(s) to be Decided

Is the landlord entitled to an order of possession of the rental unit due to unpaid rent?

#### Background and Evidence

The landlord submitted a written tenancy agreement showing a tenancy start date of February 20, 2020, monthly rent of \$625, due on the 1<sup>st</sup> day of the month, and a security deposit of \$312.50 being paid by the tenant to the landlord.

The landlord submitted evidence that on December 2, 2020, she served the tenant with the 3-page Notice, by attaching it to the tenant's door, listing unpaid rent of \$625 owed as of December 1, 2020. The effective vacancy date listed on the Notice was December 12, 2020. The Notice was filed into evidence.

The Notice sets out for the benefit of the tenant that the Notice would be cancelled if the rent was paid within five (5) days. The Notice also explained that alternatively the tenant had five days to dispute the Notice by making an application for dispute resolution.

The landlord stated that the tenant has not vacated the rental unit and did not pay the amount listed on the Notice, until January 1, 2021.

#### Analysis

After reviewing the relevant evidence, I provide the following findings, based upon a balance of probabilities:

#### **Order of possession of the rental unit –**

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so.

When a tenant fails to pay rent pursuant to the terms of the tenancy agreement, the landlord may serve the tenant a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, as was the case here.

I have no evidence before me that the tenant applied to dispute the 10 Day Notice, as his application sought cancellation of a One Month Notice served to him by the landlord.

I find the landlord submitted sufficient, unopposed evidence to prove that the tenant was served the full, 3-page Notice, owed the rent listed, did not pay the outstanding rent or file an application for dispute resolution in dispute of the Notice within five days of service.

A 10 Day Notice to end the tenancy is not effective earlier than 10 days after the date the tenant receives the Notice. Under section 90 of the Act, a document served by attachment to the door or other conspicuous place is deemed received three days later. Here, the Notice was attached to the tenant's door on December 2, 2020, and deemed received on December 5, 2020.

Section 53 of the Act allows the effective date of a Notice to be changed to the earliest date upon which the Notice complies with the Act. Therefore, I find that the Notice effective date is December 15, 2020, 10 days after the tenant was deemed to have received Notice on December 5, 2020.

I find the tenant is conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice, in this case, December 5, 2020.

As a result, I find that the landlord is entitled to an order of possession of the rental unit pursuant to section 55(2) of the Act, effective two days after service of the order upon the tenant.

I grant the landlord a final, legally binding order of possession of the rental unit. Should the tenant fail to vacate the rental unit pursuant to the terms of the order after being served, the order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court. The tenant is **cautioned** that costs of such enforcement, **such as bailiff fees**, are subject to recovery from the tenant.

Conclusion

The tenant's application is dismissed without leave to reapply as he failed to attend the hearing to present evidence.

The landlord's application for an order of possession of the rental unit has been granted as I find the Notice was supported by the evidence and therefore valid and enforceable.

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: February 2, 2021

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Residential Tenancy Branch