



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, FFT  
OPRM, OPR-DR, FFL

### Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) filed by the Tenant under the Residential Tenancy Act (the Act), on November 18, 2020, seeking:

- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice); and
- Recovery of the filing fee.

I note that section 55 of the Act requires that when a tenant submits an Application 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 compliant with section 52 of the Act.

This hearing also dealt with a Cross-Application for Dispute Resolution by Direct Request, considered filed by the Landlord under the Act on January 25, 2021, pursuant to rule 2.6 of the Residential Tenancy Branch Rules of Procedure (the Rules of Procedure), and scheduled as a participatory hearing, seeking:

- an Order of Possession based on the 10 Day Notice;
- Unpaid rent; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the Landlord and the Landlord's spouse, both of whom provided affirmed testimony. No one attended the hearing on behalf of the Tenant. The Landlord and their spouse were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

Section 59(3) of the Act and rule 3.1 of the Rules of Procedure state that except for an application referred to in subsection (6) of the Act, a person who makes an application for dispute resolution must give a copy of the application to the other party within 3 days

of the Notice of Dispute Resolution Proceeding Package being made available to them by the Residential Tenancy Branch (the Branch). Rule 2.11 of the Rules of Procedure states that a party submitting a cross-application is considered the cross-applicant and must apply as soon as possible and so that the respondent to the cross-application receives the documents set out in Rule 3.1 [Documents that must be served with the Notice of Dispute Resolution Proceeding Package] not less than 14 days before the hearing and so that the service provisions in Rule 3.15 [Respondent's evidence provided in single package] can be met. Further to this, rule 3.3 of the Rules of Procedure states that evidence supporting a cross-application must be submitted at the same time as the application is submitted, or within three days of submitting an Online Application for Dispute Resolution, be served on the other party at the same time as the Notice of Dispute Resolution Proceeding Package for the cross-application is served, and be received by the other party and the Residential Tenancy Branch directly or through a Service BC Office not less than 14 days before the hearing.

At the hearing the Landlord stated that they served their documentary evidence and the Notice of Dispute Resolution Proceeding Package, including a copy of the Cross-Application and the Notice of Hearing, by posting it to the door of the rental unit on January 30, 2020. Section 90(c) of the Act states that unless earlier received, a document given or served by attaching a copy of the document to a door or other place, is deemed received on the 3rd day after it is attached. As a result, I find that the above noted documents were deemed served on the Tenant on February 2, 2020.

Based on the above, I find that the Landlord failed to comply with the service timelines set out under both the Act and Rules of Procedure, as the Cross-Application was not served on the Tenant until seven days before the date of the hearing, and more than three days after the Notice of Dispute Resolution Proceeding Package was provided to the Landlord by email, as per their request, on January 25, 2021. As a result, I dismissed the Landlord's Application for recovery of unpaid rent, with leave to reapply. As their Application was dismissed, I decline to grant them recovery of the filing fee. Despite the Landlord's Application having been dismissed, I will deal with the matter of possession of the rental unit as a result of the Tenant's Application seeking cancellation of the 10 Day Notice, as set out below.

Although the Tenant did not attend the hearing, the Landlord acknowledged receipt of the Tenant's Notice of Dispute Resolution Proceeding Package, and raised no concerns with regards to service or timelines. Rule 7.1 of the Rules of Procedure states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. As the Landlord, who is the respondent named in the Tenant's

Application, and I attended the hearing on time and ready to proceed and there was no evidence before me that the parties had agreed to reschedule or adjourn the matter, I commenced the hearing as scheduled at 9:30 A.M. on February 9, 2021. Rule 7.3 of the Rules of Procedure states that 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 reapply.

Although I verified that the hearing details contained in the Notice of Hearing provided to the Tenant by the Branch by email on November 26, 2020, as per their request, were correct, and the line remained open for 52 minutes, no one attended the hearing on behalf of the Tenant. As neither the Tenant nor an agent acting on their behalf attended the hearing to provide evidence or testimony for my consideration in relation to the Tenant's Application, I therefore dismissed the Tenant's Application without leave to reapply, pursuant to rule 7.3 of the Rules of Procedure.

Rule 3.15 of the Rules of Procedure states that the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing. As the Landlord's documentary evidence in response to the Tenant's Application was also served as part of the evidence package posted to the door of the rental unit on January 30, 2021, I find that it was served in accordance with rule 3.15 as it was deemed received on February 2, 2021, seven days before the hearing. As a result, I have accepted the documentary evidence before me from the Landlord, in response to the Tenant's Application, for consideration.

As the Tenant's Application seeking cancellation of the 10 Day Notice is dismissed, I will now turn my mind to whether the Landlord is entitled to an Order of Possession pursuant to section 55 of the Act. The Landlord stated that the 10 Day Notice in the documentary evidence before me was personally served on an adult who resides with the Tenant on November 13, 2020, in the presence of a witness. As there is no evidence before me from the Tenant to the contrary, and pursuant to section 88(e) of the Act, I find that the Tenant was served with the 10 Day Notice on November 13, 2020.

Section 52(c) of the Act states that in order to be effective, a notice to end a tenancy must state the effective date of the notice. As the 10 Day Notice in the documentary evidence before me has no effective date, I find that it does not comply with section 52 of the Act. Although section 53 of the Act allows for incorrect effective dates to be corrected, as no effective date was given at all on the 10 Day Notice, I find that section 53 of the Act does not apply. Further to this, although section 68(1) of the Act permits

me to amend a notice to end a tenancy that does not comply with section 52 of the Act, I find that the effective date is a crucial aspect of any notice to end tenancy, the absence of which I find fatal to the enforceability of the notice to end tenancy, as I find that a tenant cannot reasonably be expected to vacate a rental unit by a date that is not provided to them. As a result, I decline to amend the 10 Day Notice before me to include an effective date as I am not satisfied the person receiving the notice knew, or should have known, what the effective date omitted from the notice was supposed to be, and I therefore I do not find it reasonable to amend the notice in this circumstance.

As a result, I therefore decline to grant the Landlord an Order of Possession based on the 10 Day Notice, despite having dismissed the Tenant's Application seeking its cancellation without leave to reapply, as I find that the 10 Day Notice does not comply with section 52 of the Act, which is a requirement for the issuance of an Order of Possession under section 55(1)(a) of the Act.

### Conclusion

The Tenant's Application is dismissed in its entirety, without leave to reapply.

Despite the above, the Landlord does not have leave to reapply for an Order of Possession based on the 10 Day Notice, as I have already found as part of the Tenant's Application, that the 10 Day Notice does not comply with section 52 of the Act. The Landlord's claim for recovery of the filing fee for this Application is also dismissed without leave to reapply.

The Landlord's Application with regards to outstanding rent is dismissed with leave to reapply. This is not an extension of any statutory time limit.

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: February 9, 2021

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Residential Tenancy Branch