



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNR, FFT

### Introduction

I was designated to hear this matter pursuant to section 58 of the *Residential Tenancy Act* (the *Act*). This hearing dealt with the tenant's application for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The Respondent called into this teleconference hearing at the date and time set for the hearing of this matter. The Applicant did not, although I waited until 9:51 a.m. to enable them to connect with this teleconference hearing scheduled for 9:30 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the Respondent and I were the only persons who had called into this teleconference.

Rule 10.1 of the Rules of Procedure provides as follows:

**10.1 Commencement of the hearing** The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

**Accordingly, in the absence of any attendance at this hearing by the Applicant, I order the application dismissed without liberty to reapply.**

### Preliminary Matters- Service of Documents

The landlord testified that they posted the 10 Day Notice on the tenant's door on January 13, 2021. They also confirmed that the tenant handed them a copy of the tenant's dispute resolution hearing package, which included a copy of the 10 Day Notice, on or about January 17 or 18, 2021. Based on this undisputed testimony, I find that the above documents were served in accordance with sections 88 and 89 of the *Act*.

The landlord testified that although they sent copies of their written and photographic evidence to the tenant, they did not provide the Residential Tenancy Branch (the RTB) with a copy of either the 10 Day Notice or a 1 Month Notice to End Tenancy for Cause (the 1 Month Notice), the latter of which they provided to the tenant on January 30, 2021. They said that they did not take this action because the tenant had attached a copy of the 10 Day Notice to the package the tenant provided to them. Based on this information, they understood that the tenant had also served these documents to the RTB.

Since the tenant had clearly received a copy of the 10 Day Notice, as they applied to cancel that Notice on January 15, 2021, and had failed to include a copy of their 10 Day Notice to the RTB, I allowed the landlord to submit late written evidence in the form of all pages of the 10 Day Notice. During the hearing, I received this additional written evidence from the landlord, which I have taken into account in reaching my decision.

### Issues(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession? Is the tenant entitled to recover the filing fee for this application from the landlord?

### Background and Evidence

The landlord said that they are managing this rental property for the owners who purchased the property in June 2020. They said that the tenant moved into the rental unit on the basis of a six month fixed term Residential Tenancy Agreement on December 1, 2019. Monthly rent is set at \$1,500.00, payable in advance on the first of each month.

The landlord said that the tenant has been frequently late in paying their rent. The 10 Day Notice was issued for unpaid rent owing for January 2021, and the tenant's failure to abide by the repayment terms they had entered into for outstanding rent owing from earlier in this tenancy. The amount identified as owing on the 10 Day Notice was \$1,650.00. The landlord testified that the tenant has not made any further payments to the landlord since the 10 Day Notice was issued.

The landlord requested an end to this tenancy on the basis of the 10 Day Notice and the issuance of an Order of Possession.

### Analysis

Section 26(1) of the *Act* establishes that "a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent." Section 46(1) of the *Act* establishes how a landlord may end a tenancy for unpaid rent "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." Section 46(2) of the *Act* requires that "a notice under this section must comply with section 52 [*form and content of notice to end tenancy*].

Section 55(1) of the *Act* reads as follows:

*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.*

I am satisfied that the landlord's 10 Day Notice entered into written evidence was on the proper RTB form and complied with the content requirements of section 52 of the *Act*. For these reasons, I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Conclusion

The tenant's application is dismissed without leave to reapply. I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant fail to comply with this Order, this Order may be filed 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 *Residential Tenancy Act*.

Dated: February 16, 2021

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Residential Tenancy Branch