



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR

### Introduction

This hearing was convened as a result of the Tenant's Applications for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") to cancel two 10 Day Notices to End Tenancy for Unpaid Rent dated March 19, 2021, and April 5, 2021 ("10 Day Notices").

The Landlord and the Tenant appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. The Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

### Preliminary and Procedural Matters

The Tenant provided the Parties' email addresses in the Application and they confirmed these addresses in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

Section 55 of the Act states that if a tenant's application to cancel an eviction notice

is unsuccessful, and I am satisfied that the eviction notice complies with the requirements under section 52, I must grant the landlord an order of possession.

### Issue(s) to be Decided

- Is the 10 Day Notice valid or should it be cancelled?
- Is the Landlord entitled to an Order of Possession?

### Background and Evidence

The Parties agreed that the periodic tenancy began on November 1, 2019, with a monthly rent of \$1,000.00, plus \$125.00 for utilities, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$500.00, and a pet damage deposit of \$500.00. The Landlord said he still holds these deposits.

The Landlord said he issued the 10 Day Notices, because the Tenant owed him \$400.00 in unpaid rent when it was due on March 16, 2021 (after the Landlord had given the Tenant extra time to pay), and \$1,460.00, when it was due on April 1, 2021.

The Tenant was served with the first 10 Day Notice by mail and email on March 19, 2021; therefore, pursuant to section 90 of the Act, it was deemed served on March 22, 2021, or three days after it was emailed, pursuant to section 44 of the *Residential Tenancy Act* Regulation.

The Tenant was served with the second 10 Day Notice by registered mail on April 5, 2021, therefore, I find it was deemed served to the Tenant on April 10, 2021, five days after it was mailed, pursuant to section 90 of the Act.

The 10 Day Notices were signed and dated on March 19, 2021 and April 5, 2021, respectively, and they had the rental unit address and had effective vacancy dates of March 31, 2021 (automatically corrected to April 6, 2021 by the Act), and April 30, 2021, (automatically corrected to April 25, 2021 by the Act).

In the hearing, the Landlord said:

From last notice, I haven't received one cent of rent; he hasn't paid me any of the

\$5,225.00 he owes. He has been living there for free, since I issued that 10 Day Notice in March.

In the hearing, the Tenant acknowledged that he has not paid rent to the Landlord, as claimed by the Landlord. He said:

No, due to other circumstances with the bank. I'm on CPP disability for the rest of my life. That money is going to pay off a loan that was taken due to a fraud case. I couldn't upload the police file number. My bank has been hacked. The Landlord refused to call my bank manager. He put me in a label that 'you're lying'. In April, there was a scam that defrauded our bank of \$5,000.00. I'm so far behind of so many things beside the rent. I asked [the Landlord] – the people that live upstairs have been paying bimonthly, but he refused. His place will be spotless I will be gone for August first.

The Landlord said:

First, he keeps bringing up about the tenant upstairs paying biweekly, those biweekly cheques are for the next month. Second, he keeps referring just to him. There are two parties who rent the suite. [S.] doesn't pay anything. He requested in a letter that his security deposit and pet damage deposit be kept for rent, [and the tenant agrees]

Regarding his staying to the 1<sup>st</sup>, it is whenever you ... I do not wish to give him one second more time. I have been more than generous for the last four months. Where does he think I have the money to pay the mortgage? I have been paying interest on my line of credit to pay the rent he isn't paying

The Tenant said:

I'm under extreme medical health advisories; to put me out on the street would be detrimental to my life, which I can also prove. Disability is from severe radiation for a blood disease. I have had three emergency operations in the last three years.

### Analysis

Section 46 (1) of the Act outlines the grounds on which to issue a 10 Day Notice for non-payment of rent:

**Landlord's notice: non-payment of rent**

**46** (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]*.

(3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.

. . .

I reviewed all relevant documentary evidence and oral testimony before me and pursuant to sections 88 and 90 of the Act, I find that the Tenant was properly served with the first 10 Day Notices by mail and email on March 22, 2020, three days after it was sent to him by email. The second 10 Day Notice was deemed served on April 10, 2021, five days after it was served by registered mail.

Section 26 of the Act states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations, or the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent. In the hearing, the Landlord said that he is owed **\$5,225.00** in unpaid as of the date of the hearing. The Tenant agreed that he owes the Landlord this much in unpaid rent.

The 10 Day Notices were signed, dated, had the rental unit address and the effective vacancy dates of March 22, 2021, and April 10, 2021, respectively.

The Tenant testified that he could not afford the rent, because of banking issues he had. However, he did not indicate why the Landlord should absorb the Tenant's cost in this regard by not receiving rent when it is due.

Further, the Tenant did not provide any documentary evidence establishing that he had a right under the Act to deduct all or a portion of the \$1,000.00 in rent and \$125.00 in utilities owed for March through July 2021. Therefore, the Tenant's Applications to cancel the 10 Day Notices are dismissed without leave to reapply.

As a result, I find that the Landlord is entitled to an Order of Possession pursuant to section 55 of the Act. As the effective date of the 10 Day Notice has passed and the

undisputed evidence before me is that the Tenant has not paid rent for March 2021 through July 2021, the Order of Possession will be effective two days after service of the Order on the Tenant. I find that the Tenant is overholding in the rental unit, since I find that the tenancy ended on March 22, 2021, when it was deemed served to the Tenant.

Section 55 (1.1) states that if a tenant applies to dispute a landlord's notice to end a tenancy, then the director must grant an order requiring the payment of the unpaid rent by the tenant, if the following circumstances apply:

- (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 find that the 10 Day Notices comply with section 52 of the Act, as to form and content, and I uphold the Landlord's 10 Day Notices to end the tenancy. Accordingly, I find that the Landlord is eligible for a monetary order pursuant to section 55 (1.1). I, therefore, award the Landlord with **\$5,225.00** from the Tenant.

### Conclusion

The Tenant has not paid rent for more than the last five months, so his Application is dismissed without leave to reapply. Pursuant to section 55 of the Act, I grant the Landlord an **Order of Possession effective two days after service of this Order** on the Tenant. The Landlord is provided with this Order in the above terms and the Tenant must be served with this order as soon as possible.

Should the Tenant fail to comply with this Order, it may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

Pursuant to section 55 (1.1), I grant the Landlord a Monetary Order from the Tenant in the amount of **\$5,225.00**. This Order must be served on the Tenant by the Landlord and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: July 14, 2021

---

Residential Tenancy Branch