



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNR, OLC, FFT, CNL**

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("Ten Day Notice") pursuant to section 46;
- Cancellation of a Two Month Notice to End Tenancy for Landlord's use ("Two Month Notice") pursuant to section 49;
- An order requiring the landlord to comply with the Act pursuant to section 62;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

The matter was set for hearing by telephone conference call. The landlord attended and testified that they had been not been served with the Notice of Hearing and Application for Dispute Resolution by the tenant. The landlord stated they learned about the hearing by calling the RTB and receiving the information.

The tenant did not attend the hearing although I left the teleconference hearing connection open for 12 minutes to enable them to call. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also

confirmed from the teleconference system the landlord and I were the only ones who had called into this teleconference.

Preliminary Issues

1. Dismissal of Tenant's Application

Rule 7.3 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 reapply.*

As the tenant did not attend the hearing and in the absence of any evidence or submissions, I order the tenant's application dismissed without leave to reapply.

2. Order of Possession

I informed the landlord that in the event I dismissed the tenant's application to cancel the Notice issued in compliance with the Act, I was required under section 55 of the Act to grant an order of possession in favour of the landlord. Section 55 states as follows:

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.

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Issue(s) to be Decided

As the tenant's application is dismissed, is the landlord entitled to an Order of Possession?

Background and Evidence

A copy of the tenancy agreement was submitted. As the tenant did not attend the hearing, the landlord provided uncontradicted evidence regarding the tenancy as follows:

ITEM	AMOUNT
Type of tenancy	Monthly
Date of beginning	September 1, 2020
Date of ending	Ongoing
Monthly rent payable on 20th	\$2,600.00
Security deposit	\$1,250.00
Pet deposit	None
Outstanding rent at time of hearing	\$8,500.00

The landlord submitted the 10 Day Notice as evidence and testified as follows:

ITEM	AMOUNT
Date of Notice	April 9, 2021
Method of Service	Posting
Effective date of Service	April 12, 2021
Effective date of Notice	April 22, 2021 (corrected)
Rent paid in full within five days of service	No
Application for Dispute Resolution by Tenant	Apr 16, 2021

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The landlord testified that, although some payments were accepted for use and occupancy only, outstanding rent to date was \$8,050.00.

Analysis

To be effective, the 10 Day Notice must comply with the provisions of Section 52 as to form and content. I find the 10 Day Notice complied with Section 52 of the *Act*.

I find the 10 Day Notice was properly served upon the tenant effective April 12, 2021 pursuant to Sections 88 and 90 of the *Act*.

A tenant may dispute a notice under Section 46 by making an application for dispute resolution within five days after the date the tenant receives the notice. The tenant applied on April 16, 2021 within the 5-day period.

As the tenant has failed to appear at this hearing or submit any testimony or evidence, I have dismissed the tenant's request to cancel the 10 Day Notice as well as all other claims.

Pursuant to Section 55(1), the director must grant to the landlord an Order of Possession of the rental unit if the landlord's notice to end tenancy complies with Section 52 and the tenant's application is dismissed.

I therefore grant the landlord an Order of Possession effective on 2 days notice.

As I have granted an Order of Possession under the 10 Day Notice, I will not consider the landlord's entitlement to an Order of Possession under the other Notice.

Further to section 55(1.1), I grant the landlord a Monetary Order in the amount of \$8,500.00 for unpaid outstanding rent.

Conclusion

The tenant's application is dismissed without leave to reapply.

I grant the landlord an Order of Possession which is effective 2 days after service on the tenant.

I grant the landlord a Monetary Order in the amount of \$8,500.00.

These Orders must be served on the tenant.

If the tenant fails to comply with the Orders, the landlord may file the Orders with the Courts of British Columbia for enforcement.

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: August 24, 2021

Residential Tenancy Branch