



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      **CNC, FFT (tenant); OPR-DR, FFL (landlord)**

### Introduction

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

- Cancellation of One Month Notice to End Tenancy for Cause (“One Month Notice”) pursuant to section 47;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

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

- An order for possession under a Ten-Day Notice pursuant to sections 46 and 55;
- Authorization to recover the filing fee for this application pursuant to section 72.

The landlord VS and agent attended the hearing on behalf of all landlords (“the landlord”) and were given the opportunity to make submissions as well as present affirmed testimony and written evidence. The hearing process was explained, and an opportunity was given to ask questions about the hearing process.

The tenant did not appear at the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional 29 minutes to allow the tenant the opportunity to call. The teleconference system indicated only the landlord and I had called into the hearing. I confirmed the correct call-in number and participant code for the tenant had been provided.

#### *Dismissal of Tenant’s Claim Without Leave*

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.*

In the absence of any evidence or submissions, I order the tenant’s application dismissed with leave to reapply.

#### *Service by Landlord*

The landlord provided affirmed testimony that the landlord served the tenant with the Notice of Hearing and Application for Dispute Resolution by registered mail sent on July 26, 2021 and deemed received by the tenant under section 90 of the *Act* five days later, that is, July 31, 2021.

The landlord provided the Canada Post Tracking Number in support of service. Pursuant to sections 89 and 90 and the landlord’s credible testimony, I find the landlord served the tenant with the Notice of Hearing and Application for Dispute Resolution July 31, 2021.

#### Issues

Is the landlord entitled to the relief requested?

### Background and Evidence

The landlord provided uncontradicted affirmed testimony as the tenant did not appear at the hearing.

The landlord submitted a copy of the lease and summarized the background of the tenancy between the landlord and the tenant:

INFORMATION	DETAILS
Type of tenancy	Monthly
Date of beginning	June 7, 2020
Date of ending	August 3, 2021
Monthly rent payable on 1 <sup>st</sup>	\$3,000.00
Security deposit	\$1,500.00
Forwarding address provided	no
Date of landlord Application	July 12, 2021

The amount of rent is stated in the tenancy agreement.

The landlord testified as follows. The tenant did not pay the rent due June 1, 2021. The landlord issued a Ten-Day Notice on June 29, 2021 which was served by posting on the tenant's door that day thereby effecting service under section 90 of the Act on July 2, 2021. A copy of the Notice was submitted which is in the standard RTB form. The tenant did not dispute the Notice. The tenant has not paid any rent after the issuance of the Notice and rent in the amount of \$12,000.00 is owing.

The landlord submitted a Proof of Service document in the RTB form in support of the testimony regarding service.

The Ten-Day Notice provides the tenant had five days from the date of service to pay the rent in full or apply for Dispute Resolution, or the tenancy would end on the stated

effective vacancy date of July 8, 2021. The landlord testified the tenant did not pay the amount owing in full.

The tenant did not apply to cancel the Notice.

The landlord provided uncontradicted testimony the amount claimed remain unpaid and owing to the landlord.

The landlord requested an Order of Possession and reimbursement of the filing fee.

The landlord testified that the tenant vacated the unit; however, occupants remain in the unit.

### Analysis

I find the form and content of the Ten-Day Notice complies with section 52 of the *Act*. I accept the landlord's testimony that the tenant was served with the Ten-Day Notice as testified and in accordance with the *Act*.

I accept the landlord's testimony and documentary evidence and find the tenant did not pay the overdue amount or dispute the Ten-Day Notice within the five-day period following service.

The tenant has not attended the arbitration. Pursuant to section 46(5), the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the Notice requiring the tenant to vacate the rental unit by July 08, 2021.

As the landlord was successful in this application, I award the landlord the amount of \$100.00 for reimbursement of the filing fee. I authorize the landlord to apply the security deposit to the award.

Based on the landlord's testimony and evidence including testimony that occupants continue to reside in the unit, I find the landlord has met the burden of proof on a balance of probabilities for an Order of Possession on two days' notice.

I therefore grant the landlord an Order of Possession effective two days after service.

Conclusion

I grant the landlord an Order of Possession effective two days after service. This Order must be served on the tenant. If the tenant fails to comply with the Order, the landlord may file the Order with the Courts of British Columbia to be enforced as Orders of that Court.

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: September 21, 2021

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Residential Tenancy Branch