



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNR, OLC, FFT

### Introduction

On September 17, 2021, the Tenant made an Application for Dispute Resolution seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”) pursuant to Section 46 of the *Residential Tenancy Act* (the “Act”), seeking an Order to comply pursuant to Section 62 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Landlord attended the hearing; however, the Tenant did not attend the hearing at any point during the 81-minute teleconference. At the outset of the hearing, I informed the Landlord that recording of the hearing was prohibited and she was reminded to refrain from doing so. She acknowledged this term, and she provided a solemn affirmation.

Rule 7.1 of the Rules of Procedure stipulates that 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.

As the Tenant did not attend the hearing, I dismiss this Application without leave to reapply.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution 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 complies with the *Act*.

The Landlord advised that she served her evidence package to the Tenant by hand on or around October 3, 2021. Based on this undisputed testimony, I am satisfied that the Landlord’s evidence has been served in accordance with the timeframe requirements of

Rule 3.15 of the Rules of Procedure. As such, I have accepted this evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Issue(s) to be Decided

- Is the Tenant entitled to cancellation of the Notice?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Is the Tenant entitled to recover the filing fee?

#### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Landlord advised that the tenancy started on September 15, 2018, that rent was established at an amount of \$3,000.00 per month, and that it was due on the first day of each month. A security deposit of \$1,500.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

She submitted that the Notice was served to the Tenant by hand on September 15, 2021. The Notice indicated that \$16,100.00 was owing for rent on September 25, 2021. The effective end date of the tenancy was noted as September 27, 2021 on the Notice.

She testified that the Tenant started making partial payments of rent in January 2020 and always carried rental arrears forward. From this date to January 2021, the Tenant accumulated a debt in the amount of \$14,213.00; however, she did not issue a payment plan pursuant to the Regulation pertaining to “affected rent” during the provincial State of Emergency. From February 2021, the Tenant continued making partial payment and then moved his parents into the bottom part of the rental unit in March 2021. From this point on, the parents would pay half the rent and the Tenant made sporadic partial payments of the difference owed.

However, while rent was received in full in April, May, and June 2021, the Tenant continued from July 2021 onwards in making partial payments or no payments at all. To date, the Landlord believes that the Tenant is in arrears **\$19,900.00** and she is seeking

a Monetary Order in this amount in addition to an Order of Possession. She referenced the documentary evidence submitted to support her claims for rental loss.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 26 of the *Act* states that rent must be paid by the Tenant when due according to the tenancy agreement, whether or not the Landlord complies with the tenancy agreement or the *Act*, unless the Tenant has a right to deduct all or a portion of the rent.

Should the Tenant not pay the rent when it is due, Section 46 of the *Act* allows the Landlord to serve a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. Once this Notice is received, the Tenant would have five days to pay the rent in full or to dispute the Notice. If the Tenant does not do either, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenant must vacate the rental unit.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the Notice, state the grounds for ending the tenancy, and be in the approved form.

When examining the Notice, I note that the Landlord has indicated the Tenant's address as "upstairs"; however, she testified that the Tenant rented the whole property, in accordance with the Tenancy agreement. Based on this undisputed evidence, I am satisfied that the Tenant rented the entire property, and this was a mistake on the Notice. Pursuant to Sections 64 and 68 of the *Act*, I amend the Notice and the Style of Cause on this Decision to reflect this correction.

Furthermore, on the bottom of the Notice, the Landlord listed her own address as the address that the Tenant was required to vacate, and she stated that this was a mistake also. Based on this undisputed testimony, and given that I find it reasonable to conclude that the Tenant would have understood that the address that should have been noted in this box was intended to be the dispute address, I find it appropriate to amend this section of the Notice to correct this error as well, pursuant to Section 68 of the *Act*.

With respect to the second page of the Notice, the undisputed evidence before me is that the Tenant clearly received the Notice as he disputed it on September 17, 2021. According to Section 46(4) of the *Act*, the Tenant had 5 days to pay the overdue rent and/or utilities or to dispute this Notice. Section 46(5) of the *Act* states that "*If a tenant*

*who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date.”*

As such, he must have paid the rent in full or disputed the Notice by September 22, 2021 at the latest. While the Tenant disputed the Notice within the five-day time frame, the Tenant did not attend the hearing. As such, his Application has been dismissed in its entirety.

Regardless, when examining the amount of rent owed on the Notice, I find it important to note that the Landlord included “affected rent” from the State of Emergency period in 2020 and she did not implement a payment plan, as was required of her, in order to include this “affected rent” on the Notice. However, she did testify that the Tenant had been in arrears as well for many months after this “affected rent” period of time, and she referenced her documentary evidence to corroborate her position.

While I acknowledge that the amount noted on the Notice is incorrectly calculated, I note that there have been many months after this “affected rent” period where the Tenant has not paid the rent in full. As such, I find it reasonable to conclude that the Tenant was aware that he was in some amount of arrears, and based on the insufficient payments the Tenant did make, there were clearly no attempts to pay close to what he believed he owed for rent in order to cancel the Notice. Consequently, while I find that the amount the Landlord indicated owing on the Notice was incorrect, as there is insufficient evidence of the Tenant paying even close to the rent owed each month, I find that this is still a valid Notice.

As the Tenant did not attend this hearing, which resulted in his Application being dismissed, and as the Tenant did not have a valid reason under the *Act* for withholding the rent, I am satisfied that the Tenant breached the *Act* and jeopardized his tenancy.

As the Landlord’s Notice for unpaid rent is valid, as I am satisfied that the Notice was served in accordance with Section 88 of the *Act*, and as the Tenant has not complied with the *Act*, I uphold the Notice and find that the Landlord is entitled to an Order of Possession for unpaid rent pursuant to Sections 46 and 55 of the *Act*. As such, I find that the Landlord is entitled to an Order of Possession that takes effect **two days** after service of this Order on the Tenant.

Regarding the amount of unpaid rent, as the Landlord was unable to sufficiently demonstrate the total amount of rental arrears owed by the Tenant, a Monetary Order for these arrears will not be awarded as a result of this Application. The Landlord is at liberty to make a separate Application to recover these losses.

As the Tenant was not successful in this Application, I find that the Tenant is not entitled to recover the \$100.00 filing fee.

Conclusion

The Tenant's Application is dismissed without leave to reapply.

Based on the above, 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: October 23, 2021

---

Residential Tenancy Branch