



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNR, DRI, OLC

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("10 Day Notice"), pursuant to section 46;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62; and
- a determination regarding their dispute of an additional rent increase by the landlord pursuant to section 43.

At the outset of the hearing, I explained to the parties that as these hearings were teleconferences, the parties could not see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so.

All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation. All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I explained the hearing and settlement processes to both parties. Both parties had an opportunity to ask questions. Both parties confirmed that they were ready to proceed with the hearing, they did not want to settle this application, and they wanted me to make a decision regarding this application. Neither party made any adjournment or

accommodation requests. 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

Should the 10 Day Notice be cancelled. If not, is the landlord entitled to an order of possession?

Is there a determination required about a rent increase?

Is the tenant entitled to an order to have the landlord comply with the Act, regulation, or tenancy agreement?

### Background and Evidence

The landlord gave the following testimony. The landlord testified that the tenancy began on May 1, 2020 with the rent of \$2400.00 due on the first of each month. The tenant paid a security deposit of \$1200.00 which the landlord still holds. The landlord testified that the tenant failed to pay rent for August and September 2021 and issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on September 8, 2021. The landlord testified that the tenant made a partial payment on October 27, 2021 but never caught up. The landlord testified that the amount of unpaid rent is \$10,400.00. The landlord requests an order of possession.

The tenant gave the following testimony. The tenant testified that the amount of unpaid rent is correct as alleged by the landlord. The tenant testified that he was unable to pay the rent due to contracting COVID – 19, losing his job and a death in the family.

### Analysis

#### 10 Day Notice

Section 46(1) of the Act states the following (my emphasis added):

*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.*

### 10 Day Notice

According to subsection 46(4) of the *Act*, a tenant may dispute a 10 Day Notice by making an application for dispute resolution within five days after the date the tenant received the notice. The tenant confirmed that he received the 10 Day Notice on September 8, 2021. Although the tenant disputed the notice within five days, the tenant did not pay the rent due within five days as required by the notice and confirmed that the amount of unpaid rent as of this hearing is \$10,400.00.

In accordance with section 46(5) of the *Act*, the failure of the tenant to pay the full rent within five days led to the end of this tenancy on September 18, 2021, the corrected effective date of the notice. In this case, this required the tenant and anyone on the premises to vacate the premises by September 18, 2021. Based on the above, I hereby dismiss the tenant's application to dismiss the notice.

Section 55(1) of the *Act* reads 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.***

As noted above, I have dismissed the tenant's application. I find that the landlord's 10 Day Notice complies with section 52 of the *Act*. Accordingly, I find that the landlord is entitled to an Order of Possession effective two (2) days after service on the tenant.

### Monetary Order

Section 55(1.1) of the *Act* states the following:

***55(1.1) If an application referred to in subsection (1) is in relation to a landlord's notice to end a tenancy under section 46 [landlord's notice: non-payment of rent],***

*and the circumstances referred to in subsection (1) (a) and (b) of this section apply, the director must grant an order requiring the payment of the unpaid rent.*

Effective on March 25, 2021, the landlord is entitled to a monetary order for unpaid rent without filing a separate application. The tenant filed this application on September 13, 2021. As noted above, the tenant's application to cancel the 10 Day Notice was dismissed without leave to reapply. The landlord's 10 Day Notice complies with section 52 of the *Act* and I have upheld that notice.

As per section 26 of the *Act*, the tenant is required to pay rent on the first day of each month. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

Both parties confirmed that the amount of unpaid rent as of today's date is \$10,400.00. The landlord continues to hold the tenant's security deposit of \$1,200.00. In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenant's entire security deposit, of \$1,200.00, in partial satisfaction of the monetary award.

The tenant did not provide any testimony in regard to a rent increase or the request to have an order for the landlord to comply with the *Act*, regulation or tenancy agreement, accordingly; I dismiss that portion of their application.

It is worth noting, that even though the tenant acknowledged and confirmed that he did not pay the rent for several months, he asked how to "appeal" the decision to delay the execution of the order of possession.

### Conclusion

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

I grant an Order of Possession to the landlord effective two (2) days after service on the tenant. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I order the landlord to retain the tenant's entire security deposit of \$1,200.00 in partial satisfaction of the monetary award.

I issue a monetary order in the landlord's favour in the amount of \$9,200.00 against the tenant. The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order 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: January 27, 2022

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Residential Tenancy Branch