



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNR-MT, CNC-MT, MNDCT, LRE, OPR-DR, MNR-DR, FFL

### Introduction

This hearing dealt with cross-applications filed by the parties. On December 8, 2021, the Tenant made an Application for Dispute Resolution seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities pursuant to Section 46 of the *Residential Tenancy Act* (the “*Act*”), seeking more time to cancel this notice pursuant to Section 66 of the *Act*, seeking to cancel a One Month Notice to End Tenancy for Cause pursuant to Section 47 of the *Act* (the “*Notice*”), seeking more time to cancel the Notice pursuant to Section 66 of the *Act*, seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*, and seeking to restrict the Landlord’s right to enter pursuant to Section 70 of the *Act*.

On December 13, 2021, the Landlord made an Application for Dispute Resolution seeking an Order of Possession based on the 10 Day Notice to End Tenancy for Unpaid Rent and Utilities pursuant to Section 46 of the *Act*, seeking a Monetary Order for unpaid rent pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenant attended the hearing. The Landlord attended the hearing as well, with N.W. attending as an agent for the Landlord as he required assistance due to his current health condition. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could 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.

The Tenant advised that she did not serve her Notice of Hearing and evidence package to the Landlord. As she acknowledged that she did not serve the Notice of Hearing package to the Landlord, I have dismissed her Application without leave to reapply. Furthermore, I have excluded her evidence and will not consider it when rendering this Decision.

N.W. advised that the Tenant was served the Landlord's Notice of Hearing and evidence package by registered mail on January 7, 2022 (the registered mail tracking number is noted on the first page of this Decision). She stated that this package was returned to sender. She also stated that the reason this package was sent out so late was due to a technical problem with the Residential Tenancy Branch.

The Tenant denied receiving the Landlord's Notice of Hearing package. I have weighed the Landlord's and N.W.'s solemnly affirmed testimony and documentary evidence of serving the package by registered mail against the Tenant's solemnly affirmed denial of receipt of this package. I find that I prefer the Landlord's testimony and supporting documentary evidence. As such, I am satisfied that this package was served to the Tenant by registered mail on January 7, 2022 and deemed to have been received by the Tenant five days after it was mailed. Furthermore, I have accepted the Landlord's evidence and will consider it when rendering this Decision.

I also acknowledge that there were notes in the Residential Tenancy Branch file regarding there being some technical difficulty with the provision of the Notice of Hearing package to the Landlord. Given that this package was served to the Tenant on January 7, 2022 by registered mail, I find that she would still have had ample opportunity to respond had she accepted the registered mail package. As such, I do not find this to be prejudicial to the Tenant.

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.

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*.

#### Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order for compensation?

- Is the Landlord 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.

All parties agreed that the tenancy started on October 1, 2021, that the rent was currently established at an amount of \$1,200.00 per month, and that it was due on the 31<sup>st</sup> day of each month. A security deposit of \$600.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

The Landlord advised that the 10 Day Notice to End Tenancy for Unpaid Rent and Utilities was served to the Tenant on December 1, 2021 by hand and the Tenant confirmed that she received this notice; however, she provided varying dates for when it was received. When she was asked why she did not dispute the notice in time, she stated that it “was a huge hassle”. She was informed that this was not a valid reason for a request for more time. Regardless, in any event, the Tenant’s Application was dismissed without leave to reapply. Both parties submitted a copy of this notice and neither copy was signed by the Landlord. As this did not comply with the proper form and content of Section 52 of the *Act*, this notice was cancelled and of no force or effect.

The Landlord then advised that the One Month Notice to End Tenancy for Cause was served to the Tenant by hand on November 1, 2021 and the Tenant confirmed receiving this Notice on or around that day. When she was again asked why she did not dispute the Notice in time, she again stated that it “was a huge hassle”. She was reminded that this was not a valid reason for a request for more time. Regardless, in any event, the Tenant’s Application was dismissed without leave to reapply.

The reasons the Landlord served the Notice are because of the following:

- Tenant has allowed an unreasonable number of occupants in the unit/site/property/park.
- Tenant is repeatedly late paying rent.
- Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord.
- Tenant or a person permitted on the property by the Tenant has engaged in illegal activity that has, or is likely to damage the Landlord’s property.
- Tenant or a person permitted on the property by the Tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet

enjoyment, security, safety or physical well-being of another occupant of the Landlord.

- Tenant or a person permitted on the property by the Tenant has caused extraordinary damage to the unit/site or property/park.

The Notice indicated that the effective end date of the tenancy was November 30, 2021. As a note, as this was served on November 1, 2021, the effective end date of the tenancy is incorrect, and it would have automatically self-corrected to December 31, 2021 pursuant to Section 53 of the *Act*.

### 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 52 of the *Act* requires that any notice to end tenancy issued by a 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.

Neither party submitted a copy of the One Month Notice to End Tenancy for Cause for consideration. As I was unable to view the relevant Notice to determine if it complied with Section 52 of the *Act*, in accordance with Rule 3.19 of the Rules of Procedure, I provided direction on requesting late evidence. A copy of the Notice, that is the subject of this dispute, was specifically requested, multiple times, to be provided by both parties no later than February 15, 2022, as it is essential to the matter at hand.

The Tenant failed to comply with this direction as she simply uploaded a copy of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities again, on February 15, 2022. As determined above, this notice had already been cancelled and determined to be of no force or effect. Ultimately, I am satisfied that the Tenant has failed to provide evidence, as requested, of the One Month Notice to End Tenancy for Cause that was served to her.

The Landlord provided a copy of this Notice by delivering it personally to the Residential Tenancy Branch on February 15, 2022 as per my instructions. When reviewing this Notice, I note that the Tenant's address and the dispute address do not indicate that this Notice is for the "basement". As well, the street name appears to be slightly misspelled. However, as the Tenant had disputed the Notice, albeit considerably late, I find it reasonable to conclude that she was aware that this Notice was for her, and was intended to apply at the dispute address that she lives at. As such, I find it acceptable to amend the Notice pursuant to Section 68 of the *Act* to correct these typographical

errors. Consequently, I find that this Notice meets all of the requirements of Section 52 and that it is a valid Notice.

The undisputed evidence is that the Notice was served to the Tenant by hand on November 1, 2021. According to Section 47(4) of the *Act*, the Tenant had 10 days to dispute this Notice, and Section 47(5) of the *Act* states that *“If a tenant who has received a notice under this section does not 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 by that date.”*

However, the Tenant did not make an Application to dispute this Notice within 10 days of receiving it. I find it important to note that the information with respect to the Tenant's right to dispute the Notice is provided on the third page of the Notice. While the Tenant made a request for more time to dispute the Notice, the Tenant's Application was dismissed in its entirety as she did not serve the Notice of Hearing package to the Landlord in accordance with Rule 3.1 of the Rules of Procedure. Furthermore, even if she did serve the Notice of Hearing package to the Landlord, her reason for requesting more time was because it was a “huge hassle” for her to dispute the Notice. Even if I did not dismiss her Application, I would not consider this to be a legitimate or valid reason for why the Notice was not disputed within the required timeframe.

Ultimately, as the Tenant did not provide any evidence corroborating that she had any extenuating circumstances that prevented her from disputing the Notice on time, I am satisfied that the Tenant is conclusively presumed to have accepted the Notice.

As such, I find that the Landlord is entitled to an Order of Possession, based on the One Month Notice to End Tenancy for Cause, that is effective **two days after service of this Order** on the Tenant.

As the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent was cancelled and of no force or effect, I find that the Landlord was not successful in his Application. As such, I find that the Landlord is not entitled to recover the \$100.00 filing fee paid for his Application.

### Conclusion

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

Based on the above, I grant an Order of Possession, on the One Month Notice to End Tenancy for Cause, 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: February 16, 2022

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Residential Tenancy Branch