



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 168289 HOLDING INC. and  
[tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      **OPR**

### **Introduction**

This hearing dealt with the Landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for an Order of Possession for a 10 Day Notice to End Tenancy For Unpaid Rent or Utilities (the "10 Day Notice") pursuant to Sections 46, 55 and 62 of the Act.

The hearing was conducted via teleconference. The Landlord's Property Manager attended the hearing at the appointed date and time and provided affirmed testimony. The Tenant did not attend the hearing. 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 that the Landlord's Property Manager and I were the only ones who had called into this teleconference. The Landlord's Property Manager was given a full opportunity to be heard, to make submissions, and to call witnesses.

I advised the Landlord's Property Manager that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. The Landlord's Property Manager testified that she was not recording this dispute resolution hearing.

The Landlord's Property Manager testified that the Tenant was personally served with the 10 Day Notice on December 2, 2021. The Landlord's Property Manager uploaded a proof of service document for the 10 Day Notice stating it was also mailed to the Tenant on December 17, 2021. I find that the 10 Day Notice was deemed served on the Tenant on December 22, 2021 pursuant to Sections 88(c) and 90(a) of the Act.

The Landlord's Property Manager testified that the on-site property manager personally served the Landlord with the Notice of Dispute Resolution Proceeding package and evidence for this hearing on February 2, 2022 (the "NoDRP package"). I find that the Tenant was served with the NoDRP package for this hearing on February 2, 2022 in accordance with Section 89(1)(a) of the Act.

### Issue to be Decided

Is the Landlord entitled to an Order of Possession for the 10 Day Notice?

### Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The Landlord's Property Manager testified that this periodic tenancy began on January 1, 2021. Monthly rent is \$700.00 payable on the first day of each month. The Landlord's Property Manager said that no deposits were collected.

The reason in the Landlord's 10 Day Notice why the Landlord was ending the tenancy was because the Tenant owed \$2,700.00 in outstanding rent on December 2, 2021. The effective date of the 10 Day Notice was December 13, 2021.

The Landlord's Property Manager testified that the Tenant has, since February 2021, either not paid rent or only partially paid rent in the months up to this hearing date. The total outstanding rent is \$6,100.00. The Landlord's Property Manager is seeking an Order of Possession, but not a Monetary Order for the unpaid rent as they do not believe it will be possible to get this amount of money from the Tenant.

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

This hearing was conducted pursuant to Rules of Procedure 7.3, in the Tenant's absence, therefore, all the Landlord's testimony is undisputed. Rules of Procedure 7.3 states:

***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 re-apply.*

Section 26(1) of the Act specifies the rules about payment of rent. It states, *a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

Section 46 of the Act outlines how a tenancy can end for unpaid rent:

***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.*
- (2) *A notice under this section must comply with section 52 [form and content of notice to end tenancy].*
- ...
- (5) *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*
- (a) *is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and*
- (b) *must vacate the rental unit to which the notice relates by that date.*
- ...

The Tenant was deemed served with the 10 Day Notice on December 22, 2021. I find that the Landlord's 10 Day Notice complied with the form and content requirements of Section 52 of the Act. The Tenant did not apply for dispute resolution after receiving the 10 Day Notice, therefore, pursuant to Section 46(5) of the Act, the Tenant is

conclusively presumed to have accepted that the tenancy ended on the effective date of the 10 Day Notice which was December 13, 2021. I uphold the Landlord's 10 Day Notice.

I must consider if the Landlord is entitled to an Order of Possession. Section 55 of the Act reads as follows:

***Order of possession for the landlord***

**55** ...

(2) *A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:*

...

(b) *a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired;*

...

(4) *In the circumstances described in subsection (2) (b), the director may, without any further dispute resolution process under Part 5 [Resolving Disputes],*

(a) *grant an order of possession, and*

...

The Tenant did not apply for dispute resolution, and the time for making that application has expired. Pursuant to Section 55(2)(b) of the Act, the Landlord is entitled to an Order of Possession in accordance with Section 55(4)(a) of the Act. I grant the Landlord an Order of Possession which will be effective two (2) days after service on the Tenant. I make no Monetary Order as the Landlord does not want this.

**Conclusion**

The Landlord is granted an Order of Possession, which will be effective two (2) days after service on the Tenant. The Landlord must serve this Order on the Tenant as soon

as possible. The Order of Possession may be filed in and enforced as an Order of the British Columbia Supreme 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 Act.

Dated: April 21, 2022

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Residential Tenancy Branch