



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Success Realty & Insurance  
and [tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes

For the Tenant: CNR-MT, CNC-MT, OLC, FFT  
For the Landlord: OPR-DR, MNR-DR, FFL

### Introduction

On January 13, 2022, the Tenant filed their Application at the Residential Tenancy Branch:

- to dispute the One-Month Notice to End Tenancy for Cause
- to dispute the 10-Day Notice to End Tenancy for Unpaid Rent (the “10-Day Notice”)
- for the Landlord’s compliance with the legislation and/or the tenancy agreement
- for reimbursement of the Application filing fee.

On January 15, 2022 the Landlord applied for an order of possession of the rental unit, and recompense of unpaid rent amounts. Additionally, they applied for reimbursement of their Application filing fee. The Landlord filed this as a Direct Request; however, this application could not be considered by that method when there is a prior extant request from the Tenant in place.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on April 11, 2022. Both parties attended the teleconference hearing. At the outset, the Tenant confirmed they received prepared evidence from the Landlord; the Landlord confirmed they received notice of the Tenant’s Application from them directly. On this basis, the hearing proceeded as scheduled.

### Preliminary Matter – One-Month Notice to End Tenancy for Cause

The Tenant applied to dispute a One-Month Notice to End Tenancy for Cause, indicating the Landlord served that document on January 11, 2022. In the hearing, the Tenant provided orally that this was issued on January 1, 2022. The Tenant was not able to locate the document during the hearing and did not submit the copy for consideration in evidence.

The Landlord likewise did not provide a copy of the document for consideration as evidence. The Landlord only gave the date of January 11, to verify what the Tenant indicated on their Application. While the Landlord indicated they had served a One-Month Notice to End Tenancy for cause – based on noise emanating from the Tenant's unit – they stated their concern was for unpaid rent, issuing a 10-Day Notice to the Tenant for that reason.

With neither party providing a copy of the One-Month Notice into evidence, and the Landlord not able to provide sufficient detail on its issuance in terms of dates, I am not satisfied there was a One-Month Notice. For this reason, I grant the Tenant's request for a cancellation of the One-Month Notice, and the tenancy will not end for that reason.

### Issues to be Decided

Is the Tenant entitled to more time in which to file an Application for Dispute Resolution, having exceeded the limit of time in which to do so as prescribed by the *Act*?

Is the Tenant entitled to a cancellation or withdrawal of the 10-Day Notice?

If the Tenant is unsuccessful in this Application, is the Landlord entitled to an Order of Possession of the rental unit?

Is the Tenant entitled to reimbursement of the Application filing fee?

Is the Landlord entitled to reimbursement of the Application filing fee?

### Background and Evidence

The Landlord provided a copy of the tenancy agreement in existence between the parties, the details of which the Tenant confirmed in the hearing. Both parties signed the agreement, alternately, on January 14 and January 25, 2021. The tenancy started for a fixed-term on January 15, 2021, ending January 31, 2022. The Landlord confirmed that the tenancy continued on a month-to-month basis after that fixed term. The Tenant paid \$950 per month on the 1<sup>st</sup> of each month.

The Landlord issued the 10-Day Notice on December 21, 2021, posted on the Tenant's door, and sent registered mail, with the effective date for the Tenant to move out being December 31, 2021. The Landlord provided on page 2 that the Tenant was owing \$450, being the remainder of rent owing from December 1, 2021.

The Landlord provided an email to them from their property manager, informing that they served the 10-Day Notice to the Tenant by attaching it to the door of the rental unit. Accompanying photos show this. Additionally, the Landlord provided the record and tracking number of the registered mail by which they sent a copy of the document to the Tenant.

In line with this 10-Day Notice, the Landlord seeks via their Application an Order of Possession for unpaid rent, and monetary compensation for the rent amounts owing. By the Landlord's account, the Tenant had not paid any rent in 2022, making the amount owing to be \$450 (December 2021), and \$950 for each of January through to April 2022.

The Tenant filed an Application for Dispute Resolution (the "Application") on January 13, 2022 seeking an order to cancel the 10-Day Notice. The Tenant also requested more time to file the Application after the 5-day dispute period indicated on the 10-Day Notice.

The Tenant explained that they were in the hospital for health reasons for one day. After this, they stayed with a friend, not knowing the 10-Day Notice was on the door. In their Application, the Tenant provided that they received the document on January 11, 2022. For reasons of dispute, they were "immobilized after having a fall due to needing a hip replacement". They were being cared for by their daughter who also became ill in this timeframe. The Tenant stated "proof of xrays & doctors visit available upon request."

In the hearing, the Tenant described how the Landlord refused to take rent money toward payment. At some point in January 2022, the Tenant gave the Landlord \$1,500 for rent, but the Landlord then changed the locks to the rental unit. The Landlord confirmed they did not deposit this cheque because it was payment made after the initial 5-day timeframe – as stated on the 10-Day Notice – for the Tenant to pay rent or apply for dispute resolution.

### Analysis

In regard to the tenant's request to file the Application after the dispute period, the *Act* outlines the following:

66(1) The director may extend a time limit established by this Act only in exceptional circumstances. . .

In these circumstances, I find that the Tenant did not prove exceptional circumstances, neither in their documentary evidence submitted, nor their oral testimony.

The Tenant did not show that exceptional specific circumstances were in place during the 10-day dispute period that expired on December 22, 2019. I appreciate the Tenant was bearing

the burden of some illness in their family and impairment to their mobility. They failed to prove conditions prevented them from applying within the required legislated timeline for making their Application. I find they made their offer of payment to the Landlord only after the timeline in place via the *Act* for doing so, and the Landlord was not obligated to accept that rent payment.

This One Month Notice was served on December 21, 2021. I deem service to have occurred three days after the Landlord attached the document to the Tenant's door on that date, as per s. 90(c). This was December 24, 2021. The Tenant failed to apply for dispute resolution within the specified time limit of 5 days after they received it, and did not pay rent by December 29, 2021. Furthermore, and as noted above I have found the tenant is not entitled to more time to dispute the 10-Day Notice. On this basis, I find the tenant is conclusively presumed under s. 46(5) of the *Act* to have accepted that the tenancy ended on the effective date on the 10 Day Notice: December 31, 2021. As such, the Tenant must vacate the rental unit.

For these reasons, I dismiss the Tenant's application to cancel the 10-Day Notice. The tenancy is ending. I find they are not eligible for the Application filing fee. The Tenant's request for the Landlord's compliance with the *Act* and/or the tenancy agreement was made on the pretext that the Landlord would not accept rent payments from them. I dismiss that issue without leave, with the payment of rent to the Landlord covered below.

Under s. 55 of the *Act*, when a tenant's application to cancel a Notice to end tenancy is dismissed and I am satisfied the Notice to end tenancy complies with the requirements under s. 52 regarding form and content, I must grant the landlord an order of possession.

I find that the 10-Day Notice complies with the requirements of form and content; therefore, the Landlord is entitled to an Order of Possession.

The *Act* s. 55(1.1) provides that I must grant an order requiring the payment of the unpaid rent. As per the 10-Day Notice, I grant the rent amount of \$450 with a Monetary Order. As per the Landlord's evidence in the hearing, the Tenant did not pay rent for the following months; the Landlord confirmed they did not accept rent from the Tenant. I therefore add the following months of rent to the Monetary Order: full rent amounts for \$950 each for January, February, March, and April 2022. This amount is \$3,800.

Because the Landlord was successful in their Application, I add the amount of \$100 for reimbursement of the Application filing fee.

### Conclusion

For the above reasons regarding their late Application, I dismiss all parts of the Tenant's Application, without leave to reapply.

I grant an Order of Possession to the Landlord effective two days after they serve it upon the Tenant. I provide the Landlord with this Order of Possession in the above terms, and they must serve the Tenant this Order as soon as possible. Should the Tenant fail to comply with this Order, the Landlord may file this Order with the Supreme Court of British Columbia where it will be enforced as an Order of that Court.

As per s. 55(1.1) and s. 72, I grant the Landlord a Monetary Order in the amount of \$4,350 for compensation set out above and the recovery of the filing fee. I provide the Landlord with this Order and they must serve it to the Tenant as soon as possible. Should the Tenant fail to comply with this Order, the Landlord may file it in the Small Claims Division of the Provincial Court where it will be 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 s. 9.1(1) of the *Act*.

Dated: April 11, 2022

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Residential Tenancy Branch