



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNR, DRI, FFT

### Introduction

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

- cancellation of the landlord's Ten Day Notice to End Tenancy for Unpaid Rent or Utilities ("10 Day Notice"), pursuant to section 46; and
- a determination regarding their dispute of an additional rent increase by the landlord pursuant to section 43; and
- authorization to recover the cost of the filing fee for this application from the landlord pursuant to section 72.

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?

Are the tenants entitled to the recovery of the filing fee?

### Background and Evidence

The landlord gave the following testimony. The landlord testified that the tenancy began on March 1, 2017 with the rent of \$1800.00 due on the first of each month. The tenant paid a security deposit of \$900.00 which the landlord still holds. The landlord testified that the tenant failed to pay \$800.00 rent for December 2021 and \$1800.00 for January 2022 and issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on January 11, 2022. The landlord testified that the tenant has never caught up. The landlord testified that the amount of unpaid rent is still \$2600.00. The landlord requests an order of possession and a monetary order.

The tenants gave the following testimony. SE testified that he paid the December rent in August 2021 to the now deceased father of AK. SM testified that he liked to pay the Christmas rent in advance to make things easier for his family at that time. ME testified that they did not receive receipts for their cash payments. ME testified that she is willing to work things out with the landlord if they successfully obtain an order of possession.

### 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 January 11, 2022. Although the tenants disputed the notice within five days, they have failed to provide sufficient evidence to show that the rent has been paid. I find the tenants submission of paying “Christmas rent” in August illogical and without sufficient proof.

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 January 21, 2022, the corrected effective date of the notice. 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. 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.

I find that the amount of unpaid rent as of today's date is \$2600.00.

The landlord continues to hold the tenant's security deposit of \$900.00. 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 \$900.00, in partial satisfaction of the monetary award.

The tenant did not provide any testimony in regard to the disputed rent increase; accordingly, I dismiss that portion of their application. The tenants have not been successful in this application and are not entitled to the recovery of the filing fee.

### Conclusion

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

The landlord has established a claim for \$2600.00. I order that the landlord retain the \$900.00 deposit in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$1700.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

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.

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: April 12, 2022

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Residential Tenancy Branch