



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNR

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to section 46.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:40 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. 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 and I were the only ones who had called into this teleconference.

The landlord testified that her office was personally served with the tenant's application for dispute resolution at the end of January 2022. I find that the landlord was served with the tenant's application for dispute resolution in accordance with section 89 of the *Act*.

The landlord was advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. The landlord testified she was not recording this dispute resolution hearing.

Per section 95(3) of the *Act*, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made Page: 2 by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

The landlord confirmed her email address for service of this decision and orders.

Section 55(1) and section 55(1.1) of the *Act* state that if the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice, the director must grant the landlord an order of possession and an order requiring the payment of the unpaid rent.

Rule 7 of the Residential Tenancy Branch Rules of Procedure provides in part as follows:

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. 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.

The tenant failed to attend this hearing. Pursuant to Rule 7 of the Residential Tenancy Branch Rules of Procedure, I dismiss the tenant's application without leave to reapply.

### Issues

1. Is the landlord entitled to an Order of Possession, pursuant to section 55(1) of the *Act*?
2. Is the landlord entitled to a Monetary Order pursuant to section 55(1.1) of the *Act*?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the landlord, not all details of the landlord's submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord provided the following undisputed testimony:

- this tenancy began on December 1, 2020 and is currently ongoing, and
- monthly rent in the amount of \$1,750.00 is payable on the first day of each month.

The landlord testified that the tenant did not pay January 2022's rent on January 1, 2022 and so on January 10, 2022 she posted a 10 Day Notice to End Tenancy for

Unpaid Rent (the “Notice”) on the tenant’s door. The tenant filed to dispute the Notice on January 17, 2022. The Notice is dated Jan 10, 2022, is signed by the landlord, states that the tenant failed to pay rent in the amount of \$1,750.00 that was due on January 1, 2022 and that the tenant must vacate the subject rental property by January 23, 2022.

The landlord testified that the tenant never paid January 2022’s rent and has not paid any rent since the Notice was served. The landlord testified that the total amount of outstanding rent from January to April 2022 is \$7,000.00. The landlord entered into evidence a ledger which states same.

### Analysis

I accept the landlord’s undisputed testimony that the Notice was posted on the tenant’s door on January 10, 2022. I find that the tenant was deemed served with the Notice on January 13, 2022, three days after its posting, in accordance with sections 88 and 90 of the *Act*. I note that the tenant filed to dispute the Notice on January 17, 2022, so it is clear that the Notice was received by the tenant.

I accept the landlord’s undisputed testimony that rent in the amount of \$1,750.00 is due on the first day of each month.

Section 46(1) of the *Act* states that 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.

Section 46(4) of the *Act* states that within 5 days after receiving a notice under this section, the tenant may

- (a) pay the overdue rent, in which case the notice has no effect, or
- (b) dispute the notice by making an application for dispute resolution.

I find that the tenant applied to cancel the Notice four days after his deemed receipt; therefore, the conclusive presumption in section 46(5) of the *Act* does not apply. Based on the landlord’s undisputed testimony and the ledger entered into evidence, I find that the tenant has not paid rent for January 2022 to the present date and has not proved that he was permitted to withhold rent. Pursuant to section 46(1) of the *Act*, I uphold the Notice because I find that the tenant did not pay January 2022’s rent within the required time period.

Section 55(1) and section 55(1.1) of the *Act* state:

**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.

(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.

Upon review of the Notice, I find that it meets the form and content requirements of section 52 of the *Act*.

Since I have dismissed the tenant's application, upheld the Notice and found that the Notice meets the form and content requirements of section 52 of the *Act*, the landlord is entitled to a two-day Order of Possession pursuant to section 55(1) of the *Act*.

Since I have dismissed the tenant's application, upheld the Notice and found that the Notice meets the form and content requirements of section 52 of the *Act*, the landlord is entitled to a Monetary Order for unpaid rent pursuant to section 55(1.1) of the *Act*.

Residential Tenancy Guideline #3 states:

Compensation for overholding under section 57 of the RTA (section 50 of the MHPTA) is not considered rent since overholding only occurs after a tenancy has ended....

If a tenant has not vacated or abandoned the unit, or the conclusive presumption does not apply, (in other words the right of possession of the rental unit or manufactured home site is in issue at the dispute resolution hearing), the director will usually rely on section 68(2) of the RTA (section 61(2) of the MHPTA) to order that the date the tenancy ends is the date of the dispute resolution hearing,

rather than the effective date shown on the notice to end tenancy. If the director is satisfied upon reviewing submitted materials and hearing evidence as to an amount of unpaid rent owing, including rent owing since the time the notice to end tenancy was issued, the director must grant an order to the landlord for the amount of unpaid rent found to be owing.

Pursuant to Residential Tenancy Policy Guideline #3, I order that the tenancy ends today, April 14, 2022 and that the landlord is entitled to lost rent from January 1, 2022 to April 14, 2022. If the landlord suffers further loss due to the tenant overholding, the landlord is at liberty to file an application for dispute resolution seeking damages for overholding. I find that the landlord is entitled to rent from January to March 2022 in the amount of **\$5,250.00** and per diem rent for April 1-14, 2022 pursuant to the following calculation:

$$\text{\$1,750.00 (rent) / 30 (days in February 2022) = \$58.3333 * 14 (days tenancy ongoing in April 2022) = } \mathbf{\text{\$816.67}}$$

### Conclusion

Pursuant to section 55(1) of the *Act*, I grant an Order of Possession to the landlord effective **two days after service 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.

Pursuant to section 55(1.1) of the *Act*, I issue a Monetary Order to the landlord in the amount of **\\$6,066.67**.

The landlord is provided with this Order in the above terms and 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: April 14, 2022

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Residential Tenancy Branch