



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding MIDDLEGATE DEVELOPMENTS LTD. and [tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes

Tenant: CNR  
Landlord: OPR-DR, FFL

### Introduction

The Tenant filed an Application for Dispute Resolution on March 4, 2022 seeking an order to cancel the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10-Day Notice”).

On March 7, 2022 the Landlord filed an Application for an Order of Possession based on the same 10-Day Notice they issued on February 24, 2022, and reimbursement of the Application filing fee. They applied via the Direct Request method which would not require a participatory hearing; however, the Tenant’s Application was already in place and the Residential Tenancy Branch joined the two Applications.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on June 16, 2022. Both parties attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions and present oral testimony during the hearing. Both parties confirmed they received the other’s Notice of Dispute Resolution Proceeding document, and the Tenant confirmed they received the Landlord’s prepared evidence.

### Issue(s) to be Decided

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

If the Tenant is not successful in their Application, is the Landlord entitled to an Order of Possession, pursuant to s. 55 of the *Act*?

Is the Landlord entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

### Background and Evidence

The Landlord provided a copy of the tenancy agreement in place between the parties since they signed it on August 2, 2021. The monthly rent was set at \$1,472 per month, payable “in advance on or before 1:00 in the afternoon of the last day of each month.” The Tenant confirmed the basic details in the agreement as being correct.

Both parties provided a copy of the 10-Day Notice, served by the Landlord on February 24, 2022. This listed the failure by the Tenant to pay the rent of \$1,472 on January 31, 2022. This was the February 2022, payable the last day of January as per the agreement. The Tenant stated they received this document underneath their door on that same day.

The document provided for the final tenancy date of March 6, 2022.

The Landlord in the hearing presented that more unpaid rent accumulated when the Tenant overstayed the rental unit after service of the 10-Day Notice on February 24, 2022. The Landlord confirmed that each month since February 2022 was unpaid by the Tenant.

The Tenant stated they did not pay the required February 2022 rent on time, and instead filed their Application to dispute the 10-Day Notice. They also presented the very difficult time they have had in 2022, impacting their financial situation and ability to pay rent. They are awaiting an imminent inflow of funds from family members to help them out. They acknowledged this situation was not fair for the building owners (*i.e.*, the Landlord) here.

### Analysis

The *Act* s. 46(1) states that a landlord may end a tenancy if rent is unpaid on any day after the rent is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the tenant receives the notice.

Following this, s. 46(4) states that within 5 days of receiving a notice a tenant may pay the overdue rent, thereby cancelling the Notice, or dispute it by filing an Application for Dispute Resolution.

I find there was a valid tenancy agreement in place between the parties. This sets out the amount owing on a monthly basis, and the exact date rent was to be paid.

The Tenant in the hearing acknowledged not paying their rent over the past few months.

For these reasons, I find the 10-Day Notice issued by the landlord on February 24, 2022 is valid and the move-out date provided is in fact 10 days past the date of issuance. For this reason, the Tenant confirming their non-payment of rent, I dismiss the Tenant's Application to cancel the 10-Day Notice.

Under s. 55 of the *Act*, when the tenant's Application to cancel a Notice to end tenancy is dismissed and I am satisfied the 10-Day Notice complies with the requirements under s. 52 regarding form and content, I must grant the landlord an order of possession.

I find 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, and minus any other evidence showing payment thereof, I grant the outstanding rent amount of \$7,360 with a Monetary Order. Any NSF or late fees imposed by the Landlord are not "rent" as defined in the *Act* and set out in s. 55(1.1); therefore, the Landlord must make a separate application should they wish to recover those amounts.

Because the Landlord was successful in their Application, by s. 72 of the *Act*, I award the \$100 Application filing fee to them.

Conclusion

For the reasons outlined above, I dismiss the tenant's Application for a cancellation of the 10-Day Notice.

I grant an Order of Possession to the Landlord effective two days after service of this Order on the tenants. Should the Tenant fail to comply with this Order, the Landlord may file this Order in the Supreme Court of British Columbia where it may be enforced as an order of that Court.

Pursuant to s. 55(1.1) of the *Act*, I grant the Landlord a Monetary Order for the recovery of the unpaid rent and reimbursement of the Application filing fee. This amount is \$7,460. The Landlord is provided with this Order in the above terms and they must serve the Tenant with this Order as soon as possible. Should the Tenant fail to comply with this Order, the Landlord may file this Order in the Small Claims Division of the Provincial Court where it may 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: June 16, 2022

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Residential Tenancy Branch