



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **OPR-DR**

### Introduction

This hearing was reconvened as a result of the Landlords' application for dispute resolution ("Application") under the *Residential Tenancy Act* (the "Act") for an Order of Possession for non-payment of rent pursuant to sections 46 and 55

This hearing was reconvened from a non-participatory, *ex parte*, "direct request" proceeding. In an interim decision dated March 8, 2022 ("Interim Decision"), the presiding adjudicator determined that a participatory hearing was necessary to address questions that could not be resolved on the documentary evidence submitted by the Landlords. As a result, this hearing was scheduled and came on for hearing on June 10, 2022 to consider the Landlords' application. Notices of the reconvened hearing were enclosed with the Interim Decision. The Landlords were instructed to serve the notice of reconvened hearing, the Interim Decision and all other required documents, upon the Tenant within three days of receiving the Interim Decision, in accordance with section 89 of the Act.

The Tenant did not attend this hearing. I left the teleconference hearing connection open until 11:28 am in order to enable the Tenant to call into this teleconference hearing scheduled for 11:00 am. The two Landlords ("NH" and "GH") and the Landlords' legal counsel ("JC") attended the hearing and were 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 Dispute Resolution Proceeding ("NDRP") for this reconvened hearing. I also confirmed from the teleconference system that NH, GH, JC and I were the only ones who had called into this teleconference.

JC stated the NDRP was served on the Tenant in-person on March 10, 2022. JC submitted a signed and witnessed Proof of Service of the NDRP on the Tenant to

corroborate his testimony. I find the Tenant was served with the NDRP in accordance with the provisions of section 89 of the Act.

JC stated the Landlords' evidence for the Application was served on the Tenant in-person on February 21, 2022. JC submitted a signed and witnessed Proof of Service on Form RTB-44 to corroborate his testimony. I find the Tenant was served with the Landlords' evidence in accordance with section 88 of the Act.

JC stated the Landlords did not receive any evidence from the Tenant for this hearing.

#### Preliminary Matter – Request for Amendment to Application

GH made a request that I amend the Application to include a claim for a monetary order for the rental arrears owing by the Tenant to the Landlords. I explained that, as the Application did not include a claim for rental arrears, the Tenant was not on notice that the Landlords were seeking unpaid rent. As such, the Tenant did not have the opportunity to consider whether she should dispute the claim for unpaid rent or to attend this hearing. As such, I declined to amend the Application to include a claim for a monetary order for rental arrears. I told the Landlords they have the option of making another application for dispute resolution to seek compensation for unpaid rent, compensation for overholding the tenancy or any damages the Tenant or her guests may have caused to the rental unit.

#### Issue to be Decided

- Are the Landlords entitled to an Order of Possession?

#### Background and Evidence

JC stated the tenancy commenced on October 1, 2019, for a fixed term of one-year, with rent of \$850.00 payable on the 1<sup>st</sup> day of each month. The Tenant was required to pay a security deposit of \$425.00 by September 19, 2019. JC stated the Tenant paid the deposit and confirmed the Landlords were holding the deposit in trust for the Tenant. JC stated the tenancy agreement did not include the unit number as part of the address of the rental unit but the 10 Day Notice correctly stated the unit number. JC stated the Tenant moved into and has always occupied the rental unit specified in the Application. Based on the undisputed testimony of JC, I find there is a tenancy between the Landlords and Tenant for the rental unit at the address specified in the Application.

JC stated the Landlords served a Ten Day Notice to End Tenancy for Unpaid Rent and/or Utilities dated January 18, 2022 ("10 Day Notice") on the Tenant in-person. JC testified the 10 Day Notice stated the Tenant had rental arrears of \$1,050.00 as of January 1, 2022 calculated as follows:

Date	Owed	Paid	Balance
01-Dec-21	\$850.00	\$650.00	\$200.00
01-Jan-22	\$850.00	0.00	\$1,050.00
<b>Total</b>	<b>\$1,700.00</b>	<b>\$650.00</b>	<b>\$1,050.00</b>

JC stated the Tenant removed most of her personal possession from the rental unit on June 9, 2022 and was seeking an Order of Possession in the event the Tenant attempted to return to the rental unit. JC stated the Landlords were not aware of any application by the Tenant to dispute the 10 Day Notice.

### Analysis

Section 26 and subsections 46(1), 46(2), 46(4) and 46(5) of the Act state:

- 26 (1)** 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.
- 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]*.
- (4)** 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.

- (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.*

[emphasis added in italics]

JC stated the Landlords were not aware of any application for dispute resolution made by the Tenant to dispute the 10 Day Notice. Accordingly, pursuant to section 46(5)(a) of the Act, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the 10 Day Notice, being January 28, 2022. The Tenant has not fully vacated the rental unit.

Sections 55(2), 55(3) and 55(4) of the Act state:

- 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:
  - (a) a notice to end the tenancy has been given by the tenant;
  - (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;*
  - (c) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;
  - (c.1) the tenancy agreement is a sublease agreement;
  - (d) the landlord and tenant have agreed in writing that the tenancy is ended.
- (3) The director may grant an order of possession before or after the date when a tenant is required to vacate a rental unit, and the order takes effect on the date specified in the order.

- (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*
  - (b) if the application is in relation to the non-payment of rent, grant an order requiring payment of that rent.

[emphasis added in italics]

Based on the undisputed testimony of JC, I find the Tenant had rental arrears of \$1,050.00 as of January 1, 2022. As such, I find the Landlords have satisfied their onus to prove, on a balance of probabilities, that the 10 Day Notice was issued for a valid reason. I have reviewed the 10 Day Notice and find it complies with the form and content requirements of section 52 of the Act. Pursuant to section 55(4)(a) of the Act, I grant the Landlords an Order of Possession effective two days after service of the Order on the Tenant by the Landlords. As the Tenant did not vacate the rental unit on the effective date of the 10 Day Notice, I order the tenancy ended on June 10, 2022 pursuant to section 68(2)(1) of the Act.

### Conclusion

The Landlords are granted an Order of Possession effective two days after service of the Order on the Tenant by the Landlords. This Order must be served by the Landlords on the Tenant as soon as possible upon receipt from the Residential Tenancy Branch. 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: June 12, 2022

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Residential Tenancy Branch