



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute codes      CNR MNDC OLC RP FF / OPC FF

### Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

Tenant:

- cancellation of the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 32;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Landlord:

- an order of possession for cause pursuant to section 55;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony and present evidence. No issues were raised with respect to the service of the tenant’s application and evidence submissions on file.

An issue was raised by the tenant in respect to service of the landlord’s application. The landlord confirmed its application was not served on the tenant and agreed to

withdraw the application and requested an order of possession and monetary order in the event the tenant's application were to be dismissed.

### Preliminary Issue – Scope of Application

*Residential Tenancy Branch Rules of Procedure*, Rule 2.3 states that, if, in the course of the dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may sever or dismiss the unrelated disputes contained in a single application with or without leave to apply.

Aside from the application to cancel the Notice to End Tenancy, I am exercising my discretion to dismiss the remainder of the issues identified in the tenants' application with leave to reapply as these matters are not related. Leave to reapply is not an extension of any applicable time limit. The tenant's application for monetary compensation was partly related to her disputing of the Notice to End Tenancy and this will be addressed below.

### Issues

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an order of possession and a monetary order for unpaid rent?

### Background and Evidence

The tenancy for this upper portion of a home began in November 2020. The current monthly rent is \$1700.00 payable on the 1<sup>st</sup> day of each month as per the tenancy agreement. The tenant insisted this was later changed to the 15<sup>th</sup> as the landlord was always late to pick up the rent. The landlord disputed that the date payable was ever changed and that it remained payable on the 1<sup>st</sup> as per the tenancy agreement. I find the tenant's argument about the date to be unsupported and for the most part not relevant. The tenant paid a security deposit of \$850.00 at the start of the tenancy.

The landlord's witness S.M. testified that on February 17, 2022, he served the tenant with the 10 Day Notice by sending a copy by registered mail. A registered mail receipt with tracking number was submitted as evidence. The outstanding rent amount as per the 10 Day Notice was \$5400.00 which was due on February 1, 2022. The landlord submits the tenant was rent arrears starting in September 2021 and \$5400.00 was outstanding as of February 1, 2022. The landlord submitted an account ledger in support as well as copies of rent receipts.

The landlord submits that the tenant did not pay the full amount of the arrears indicated on the 10 Day Notice within five days of being served and that the full amount is still outstanding. The landlord further submits that no rent has been paid since and the total outstanding amount as of the date of the hearing which includes June 2022 rent is \$12,200.00.

The tenant testified that she did not receive the 10 Day Notice until 10-11 days after February 17, 2022. The tenant filed her application to dispute the Notice on March 15, 2022.

The tenant testified that there was never \$5400.00 owing, and the total owing was only \$2000.00. The tenant submits she had applied to a rent bank for assistance and her application was going to be approved until the landlord provided them incorrect information on the amount outstanding. Her application was therefore denied. The tenant submits that she was also required to pay the full utilities bills even though she was only responsible for 60% as per the tenancy agreement. The tenant submits that even this amount was overcharged at 70% since November 2021. The tenant submits that she was supposed to be re-imbursed for the landlord's portion of the bills. The tenant testified that the utilities bills were paid directly through income assistance. The tenant submits that she repeatedly asked the landlord for the updated amounts outstanding after taking into consideration the re-imbursements owed to her, but no update was provided. The tenant submits there was also a \$35/monthly re-imbursement owed to her for yardwork. The tenant did not dispute that any rent has not been paid since being issued the 10 Day Notice.

The landlord submits that the tenant's rent bank application getting denied is not their responsibility. The landlord submits they provided accurate information which was the amount of rent outstanding as of February 2022. The landlord submits the information provided to the rent bank by the tenant was based upon rent outstanding in December 2021 and the landlord was asked to provide information in February 2022 which is why there was a discrepancy. Regarding the utilities, the landlord submits the utilities are in the tenant's name and only the tenant has copies of the bills. The landlord submits the tenant did not provide any bills or payment receipts for re-imbursement.

### Analysis

Section 26 of the Act requires that 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.

Section 46 of the Act requires that upon receipt of a 10 Day Notice, the tenant must, within five days, either pay the full amount of the arrears indicated on the 10 Day Notice or dispute the 10 Day Notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch.

Section 55(1) of the Act states that if a tenant applies to dispute a landlord's notice to end tenancy and their Application for Dispute Resolution is dismissed or the notice is upheld the landlord must be granted an order of possession if the notice complies with all the requirements of Section 52 of the Act. Further, as per section 55(1.1) if the application is in relation to a notice to end tenancy under section 46 [*landlord's notice: non-payment of rent*] an order requiring the payment of the unpaid rent must also be granted.

The tenant was served with the 10 Day Notice by registered mail on February 17, 2022. As per section 89 of the Act, the tenant would be deemed served the 10 Day Notice five days after on February 22, 2022. Accordingly, the tenant's application should have been filed on or before February 28, 2022, which is the next business day after the 5-day time limit. The tenant's application was not filed until March 15, 2022, which is clearly outside the permitted time period. A registered mail tracking search indicates a notice card was left for the tenant as early as February 21, 2022, and the item was not collected by the tenant until March 7, 2022. It is up to the parties to pick up their registered mail package and not doing so does not extend the time limits for filing a dispute. The tenant did not provide any evidence such that she may have been out of town when the package was delivered.

Even if the tenant's late application were to be accepted, which it is not, I find the tenant failed to pay the outstanding rent amount as per the 10 Day Notice within 5 days of receiving the Notice. The tenant disputed the outstanding amount due to reimbursements owed to her, but the tenant did not dispute that at least some rent was outstanding. At the very least, the tenant should have provided a calculation for the amount she believed to be outstanding and paid that amount within the 5-day time

period. Instead, the tenant has failed to pay any rent at all since the Notice was issued over 4 months ago.

In accordance with section 46(5) of the *Act*, as the tenant failed to file this dispute or pay the outstanding rent within five days, the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the 10 Day Notice.

I find that the 10 Day Notice issued by the landlord complies with the requirements of Section 52 of the *Act*, accordingly, the landlord is granted an Order of Possession pursuant to section 55 of the *Act*. As the effective date of the 10 Day Notice passed quite some time ago, pursuant to section 68(2) of the *Act*, I find this tenancy ends effective the date of this decision.

I accept the landlord's account ledger and receipts as credible evidence of the total rent outstanding. The tenant may be entitled to some re-imbursements, but the tenant has failed to provide a detailed account of any such amounts and supporting evidence. As such the tenant is at liberty to re-apply for such compensation that may be owed to her.

The landlord is granted a monetary order in the amount of \$12,200.00 which includes unpaid rent for up to June 30, 2022.

### Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant(s) 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 67 of the *Act*, I grant the landlord a Monetary Order in the amount of \$12,200.00. 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: June 30, 2022

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Residential Tenancy Branch