



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FFT, CNR, RP, AAT

### Introduction

This hearing dealt with the tenants' 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;
- an Order for regular repairs, pursuant to section 32;
- Order to Allow Access for the Tenant or their guests, pursuant to sections 30 and 70; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The tenants' roommate and the landlord's assistant attended the hearing and affirmed to tell the truth.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are 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 by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

Both parties confirmed their email addresses for service of this decision and order.

Section 55(1) and section 55(1.1) of the *Act* states 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.

#### Preliminary Issue- Severance

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") and the continuation of this tenancy is not sufficiently related to any of the tenant's other claims to warrant that they be heard together. The parties were given a priority hearing date in order to address the question of the validity of the 10 Day Notice.

The tenant's other claims are unrelated in that the basis for them rests largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the 10 Day Notice. I exercise my discretion to dismiss all of the tenants' claims with leave to reapply except cancellation of the 10 Day Notice and recovery of the filing fee for this application.

#### Preliminary Issue- Service

The tenants testified that they served the landlord with their application for dispute resolution via registered mail but could not recall on what date. The landlord testified that he received the above package via registered mail but could not recall on what date. I find that the landlord was served in accordance with section 89 of the *Act*.

The tenants testified that they did not serve the landlord with their evidence. The landlord testified that he did not serve the tenants with his evidence.

Section 3.14 of the *Residential Tenancy Branch Rules of Procedure* (the "Rules") states that evidence not submitted at the time of Application for Dispute Resolution that are

intended to be relied on at the hearing must be received by the respondent not less than 14 days before the hearing. I find that since the landlord did not receive the tenants' evidence package, all evidence submitted by the tenant, is excluded from consideration, with the exception of the 10 Day Notice. I find that neither party is prejudiced by admittance of the 10 Day Notice for consideration because both parties agreed that they had a copy.

Section 3.15 of the *Rules* states that the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing. I find that since the tenants did not receive the landlord's evidence package, all evidence submitted by the landlord is excluded from consideration.

#### Preliminary Issue- Amendment

Both parties agree that the street suffix for the subject rental property is "street". The tenants' application for dispute resolution did not include the suffix on the address of the subject rental property. Pursuant to section 64 of the *Act*, I amend the tenants' application for dispute resolution to include the suffix "street".

#### Issue to be Decided

1. Are the tenants entitled to cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to section 46 of the *Act*?
2. If the tenants' application is dismissed or the landlord's Notice to End Tenancy is upheld, and the Notice to End Tenancy complies with the *Act*, is the landlord entitled to an Order of Possession, pursuant to section 55(1) of the *Act*?
3. If the tenants' application is dismissed or the landlord's Notice to End Tenancy is upheld, and the Notice to End Tenancy complies with the *Act*, is the landlord entitled to a Monetary Order for unpaid rent, 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 both parties, not all details of their respective submissions and arguments are reproduced

here. The relevant and important aspects of the tenants' and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on September 1, 2020 and is currently ongoing. Monthly rent in the amount of \$1,100.00 is payable on the first day of each month.

The landlord testified that the tenants were personally served with a 10 Day Notice on February 5, 2022. Tenant J.H. testified that she received the 10 Day Notice on February 5, 2022. The tenants filed to dispute the 10 Day Notice on March 8, 2022. The 10 Day Notice is signed and dated by the landlord, gives the address of the rental unit, states the effective date of the notice as February 14, 2022, and states the ground for ending the tenancy is failure to pay \$1,100.00 in rent that was due on February 1, 2022. The 10 Day Notice is on RTB Form #30.

Both parties agree to the following rent payments made in the following months:

Month	Amount Paid
February 2022	\$600.00
March 2022	\$450.00
April 2022	\$500.00
May 2022	\$950.00

The tenants testified that in June 2022, they paid the landlord \$1,150.00. The landlord testified that in June 2022 the tenants paid \$850.00.

### Analysis

Based on the testimony of both parties I find that the landlord personally served tenant J.H. with the 10 Day Notice on February 5, 2022, in accordance with section 88 of the *Act*.

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 53(2) of the *Act* states that if the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section. Pursuant to section 53(2) of the *Act*, I find that the corrected effective date of the 10 Day Notice is February 15, 2022.

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.

Section 46(5) of the *Act* states that 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.

Based on the testimony of both parties, I find that the tenants did not pay the overdue rent within five days of receiving the 10 Day Notice as both parties agree that the tenants have not paid full rent for any month between February and May 2022. The tenants filed to dispute the 10 Day Notice more than five days after they received it. In accordance with section 46(5) of the *Act*, the tenants' failure to take either of the above actions within five days led to the end of this tenancy on the corrected effective date of the 10 Day Notice.

In this case, this required the tenants to vacate the premises by the corrected effective date of February 15, 2022. I find that this tenancy ended on February 15, 2022. As the tenants have not vacated the subject rental property, I find that the landlord is entitled to a 2-day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenants. If the tenants do not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia. The tenants' application to cancel the 10 Day Notice is dismissed without leave to reapply.

Upon review of the 10 Day Notice, I find that it meets the form and content requirements of section 52 of the *Act* because it:

- (a) is signed and dated by the landlord,
- (b) gives the address of the rental unit,
- (c) states the effective date of the notice,
- (d) states the grounds for ending the tenancy, and
- (e) is in the approved form.

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.

Residential Tenancy Guideline #3 states

Under section 55(1.1) of the RTA (section 48(1.1) of the MHPTA), the director must grant a landlord an order requiring the tenant to pay the unpaid rent if the following conditions are met:

- the tenant has disputed a notice to end tenancy issued by the landlord for unpaid rent under section 46 of the RTA (section 39 of the MHPTA);
- the notice to end tenancy complies with section 52 of the RTA (section 45 of the MHPTA); and
- the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

This provision allows a landlord to obtain a monetary order for unpaid rent without having to file their own application. Under the legislation, the requirement to pay rent flows from the tenancy agreement. Unpaid rent is money that is due and owing during the tenancy.

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. Compensation due to a loss of rent resulting from the tenant ending the tenancy early or by leaving the rental unit or manufactured home site in an unrentable condition is also not considered unpaid rent. The loss arises after and because of the tenancy ending. If a landlord is seeking such compensation, they must make a separate application for dispute resolution and give proper notice to the tenant in accordance with the provisions of the legislation. The director cannot make an order for this type of compensation under section 55(1.1) of the RTA (section 48(1.1) of the MHPTA).

To determine whether an amount owing is for unpaid rent and must be ordered at the hearing, the director must make a finding about when the tenancy ends or ended.

....

Under section 46(5) of the RTA (section 39(5) of the MHPTA), a tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice if they do not pay the rent or make their application for dispute resolution within 5 days after receiving the notice to end tenancy. If the tenant submits their application late and the director does not extend the time limit under section 66 of the RTA (section 59 of the MHPTA), then the tenancy ended on the effective date of the notice to end tenancy. Only rent owing up until the effective date of the notice to end tenancy would constitute unpaid rent for the purpose of section 55 (1.1) of the RTA (section 48 (1.1) of the MHPTA).

Since I have determined that the tenancy ended on the corrected effective date of the Two Month Notice, that being February 15, 2022, only rent due between February 1, 2022 and February 15, 2022 constitutes unpaid rent for the purposes of section 55(1.1) of the *Act*. Both parties agree that the tenants paid \$600.00 in rent for the month of February 2022. Rent owed from February 1-15, 2022 is as follows:

\$1,100.00 (February 2022 rent) / 28 (days in February 2022) =

\$39.28571428571429 (daily rent) \* 15 (days of tenancy in February 2022) =

**\$589.2857142857143**

As the tenants paid \$600.00 in rent for February 2022, I find that for the purposes of section 55(1.1) of the *Act*, the landlord is not owed any unpaid rent, but may be owed damages for overholding. If the landlord wishes to pursue a claim for overholding, the landlord will have to file a new application for dispute resolution seeking those damages.

As the tenants were not successful in this application for dispute resolution, I find that they are not entitled to recover the \$100.00 filing fee from the landlord, pursuant to section 72 of the *Act*.

### 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 tenants**. Should the tenants and all other occupants 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 21, 2022

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Residential Tenancy Branch