



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      **FFT, CNR, OLC**

### Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (“Ten Day Notice”) pursuant to section 46;
- An order requiring the landlord to comply with the *Act* pursuant to section 62;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

The tenant attended the hearing and was given the opportunity to make submissions as well as present affirmed testimony and written evidence. The hearing process was explained, and an opportunity was given to ask questions about the hearing process.

The landlords did not appear at the hearing. The landlords are referenced in the singular.

I kept the teleconference line for 14 minutes to allow the landlord the opportunity to call. The teleconference system indicated only the tenant and I had called into the hearing. I confirmed the correct call-in number and participant code for the landlord had been provided.

The tenant provided affirmed testimony that they served each landlord with the Notice of Hearing and Application for Dispute Resolution by separate registered mail sent on March 25, 2022 and deemed received by the landlord under section 90 of the *Act* five days later, that is, March 30, 2022.

The tenant submitted the mailing receipt as evidence which included the Canada Post Tracking Number.

Pursuant to the tenant's evidence and sections 89 and 90, I find the tenant served each landlord with the Notice of Hearing and Application for Dispute Resolution on March 30, 2022.

### *Application under Section 62*

At the outset of the hearing, the tenant stated she moved out of the unit on March 31, 2022. The tenant stated the landlord has retained some of her personal possessions and has not allowed her to retrieve them contrary to the provisions of the Act.

I informed the tenant an information officer at the RTB may be able to assist by providing information about the rights and responsibilities of both parties according to the Residential Tenancy Act (RTA).

Further, I informed the tenant of The Compliance and Enforcement Unit (CEU) which ensures compliance with the residential tenancy laws of BC. When a landlord or tenant has seriously and deliberately not followed BC tenancy laws, the CEU may investigate and issue administrative monetary penalties.

The tenant requested her application for an Order under section 62 be withdrawn with leave to reapply.

The tenant's application under section 62 is accordingly withdrawn with leave to reapply.

### *Preliminary Issue*

Section 55 of the *Act* requires that when a tenant applies for Dispute Resolution seeking to cancel a Ten-Day Notice issued by a landlord, I must consider if the landlord is entitled to an Order of Possession if the tenant's Application is dismissed and the landlord has issued a Ten-Day Notice that is compliant with the *Act*.

Further to this, the standard of proof in a dispute resolution hearing is on a balance of probabilities. Usually, the onus to prove the case is on the person making the claim.

However, in situations such as in the current matter, where the tenant has applied to cancel a landlord's Ten-Day Notice, the onus to prove the reasons for ending the tenancy transfers to the landlord as the landlord issued the Notice and seeks to end the tenancy.

As the landlord did not attend and as I have found the landlord was served with the Notice of Hearing and Application for Dispute Resolution, I find the landlord submitted no evidence admissible under the *Act* and Rules of Procedure.

As no evidence was submitted on behalf of the landlord, I order that the tenant's application to cancel the Ten-Day Notice is granted. The Notice is void and of no effect.

As the tenant has been successful in this Application, I grant the tenant an award for reimbursement of the filing fee of \$100.00.

### Conclusion

The tenant's application under section 62 is dismissed with leave to reapply.

I order that the tenant's application to cancel the Ten-Day Notice is granted. The 10 Day Notice is cancelled.

The tenant is granted a Monetary Order for reimbursement of the filing fee of \$100.00. This Order must be served on the landlord. The Order may be filed and enforced in the Courts of the Province of BC.

The remainder of the tenant's claims are withdrawn as dismissed without leave to reapply.

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