



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute codes      CNR FF

### Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of a 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 46 (the 10 Day Notice);
- authorization to recover the filing fee for this application pursuant to section 72.

The hearing was conducted by conference call. The tenants did not attend this hearing, although I waited until 9:13 a.m. in order to enable the tenants to connect with this teleconference hearing scheduled for 9:00 a.m. The tenants should have been aware of the hearing date, time and call in instructions as this dispute was initiated by the tenants and the tenants were required to serve a copy of the notice of hearing on the landlord. The landlord attended the hearing and was given a full opportunity to provide affirmed testimony and present evidence.

### 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 began on April 15, 2021, with the previous landlord. The new landlord took possession of the property April 15, 2022. The current monthly rent is \$2400.00 payable on the 1<sup>st</sup> day of each month. The tenants paid a security deposit of \$1200.00 at the start of the tenancy which has been transferred over to the new landlord.

The landlord testified that on June 14, 2022 he served the tenants with the 10 day Notice by posting a copy to the door of the rental premises. The 10 Day Notice indicates the tenants owed outstanding rent in the amount of \$2400.00 due June 1, 2022.

The landlord testified that the tenants 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 testified that the tenants had also not paid rent for the months of May and July 2022.

### 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. However, the amount a tenant can be ordered to pay in such cases is limited to the amount as per the 10 Day Notice. The landlord seeking additional compensation is required to make a separate application and provide proper notice to the tenant in accordance with the legislation.

The tenants filed to dispute the 10 Day Notice within the time limit permitted under the Act. However, the tenants failed to participate in this hearing and present any evidence to support why the 10 Day Notice should be cancelled. Accordingly, the tenants' application is dismissed in its entirety without leave to reapply.

I accept the landlord's undisputed testimony and find the tenants failed to pay the outstanding rent as per the 10 Day Notice within 5 days of the Notice being served and that the full amount is still outstanding.

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.

The landlord is granted a monetary award for outstanding rent in the amount of \$2400.00, as per the 10 Day Notice.

The landlord continues to hold a security deposit of \$1200.00. Using the offsetting provisions of section 72 of the Act, the landlord may retain the security deposit in partial satisfaction of the monetary award.

Therefore, I find that the landlord is entitled to a Monetary Order in the amount of \$1200.00.

### 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.

I grant the landlord a Monetary Order in the amount of \$1200.00. 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: July 29, 2022

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Residential Tenancy Branch