



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNR, FFT, OPR-DR, MNR-DR, FFL

### Introduction

This hearing dealt with cross-applications filed by the parties. On Mar 17, 2022, the Tenant made an Application for Dispute Resolution seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) pursuant to Section 46 of the *Residential Tenancy Act* (the “Act”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On March 25, 2022, the Landlord made an Application for Dispute Resolution seeking an Order of Possession for Unpaid Rent based on the Notice pursuant to Section 46 of the *Act*, seeking a Monetary Order for unpaid rent pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

This hearing was scheduled to commence via teleconference at 11:00 AM on July 8, 2022.

Both the Tenant and the Landlord attended the hearing. K.S. attended the hearing later, as a witness for the Landlord. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

The Tenant advised that she served the Notice of Hearing package to the Landlord by placing it into his mail slot on March 25, 2022; however, the Landlord advised that he did not receive this package. The Tenant did not have any proof of service to corroborate her testimony. As there is no proof of this Notice of Hearing package being served, and as it was allegedly served in a manner that is not permitted under Section 89 of the *Act*, I am not satisfied that this was sufficiently served to the Landlord. As such, I dismiss the Tenant's Application in its entirety.

In addition, while she stated that she submitted documentary evidence on this file, the only document that was submitted was a word document that appeared to have been served to her by her Landlord.

The Landlord advised that K.S. served the Tenant with the Notice of Hearing and evidence package by hand on March 31, 2022, and that he witnessed this service. However, the Tenant stated that she did not receive this package, but she did receive the Landlord's evidence by registered mail on or around June 14, 2022. K.S. was then brought into the hearing and he provided solemnly affirmed testimony that he hand served the Tenant with this package on March 31, 2022, and that she took this package. The Landlord reiterated his position that he also witnessed this service.

When the Tenant was asked multiple times for her submissions with respect to this testimony about service, each time she would continue to address her belief that the Notice was not valid. When she was asked why she was attempting to redirect the hearing towards the validity of the Notice as opposed to answering questions about service of the Notice of Hearing package, she eventually testified that both the Landlord and K.S. came to the rental unit at some point, but she could not remember the date. However, she stated that they never served her with any documents or Notice of Hearing package.

In reviewing the conflicting testimony, I find it important to note that the Tenant was given multiple opportunities to provide testimony about the Landlord's claims of service of the Notice of Hearing package. However, it was clear that the Tenant was attempting to avoid answering this question and guide the hearing in another direction. In my view, it was evident that this was an intentional effort by the Tenant to mislead the proceeding away from an answer that she did not want to address, and this causes me to question her credibility. Given that K.S. provided solemnly affirmed testimony that was supported by the Landlord's own solemnly affirmed testimony, I find it more likely than not that the Tenant was duly served the Notice of Hearing package on March 31, 2022, by hand.

With respect to the Landlord's evidence, while the Landlord provided conflicting testimony about it being served with the Notice of Hearing package, as both parties agreed that it was served by registered mail on June 14, 2022, I am satisfied that the Tenant received this in accordance with the timeframe requirements of Rule 3.14 of the Rules of Procedure. As such, I have accepted all of the Landlord's evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an Order of Possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

#### Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to recover the filing fee?
- Is the Tenant entitled to recover the filing fee?

#### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Landlord advised that he purchased the rental unit on March 31, 2021, that he inherited the tenancy, and that he did not have a copy of the tenancy agreement. He was unsure of when the tenancy started. However, he stated that the rent was established at an amount of \$1,483.00 per month and that it was due on the first day of each month. A security deposit of \$700.00 was also paid.

The Tenant advised that her tenancy started on January 15, 2016, and that the Landlord took over the property sometime around March 2021. She stated that the Landlord was lying about not having a copy of the tenancy agreement as she provided one to him in September 2021. She agreed that rent was \$1,483.00 per month, that it was due on the first day of each month, and that a security deposit of \$700.00 was also paid. A copy of the signed tenancy agreement was not submitted as documentary evidence.

The Landlord advised that the Notice was served to the Tenant by being placed through the Tenant's mail slot on March 8, 2022. The Tenant confirmed that it was put through her mail slot, but that it was done on March 9, 2022. In addition, she stated that the Landlord texted her on March 9, 2022 to inform her of this, and she acknowledged receiving it on March 9, 2022, as well.

When it was determined that the Tenant made her Application to dispute the Notice on March 17, 2022 and that this was done late, she claimed that she disputed this on time as the Notice was deemed received after three days. She then attempted to claim that she did not receive the Notice on March 9, 2022, contrary to her earlier testimony. This attempted reversal of her earlier testimony caused me to question the legitimacy and truthfulness of her submissions on the whole. Regardless, even if the Tenant had disputed this Notice on time, as her Application was dismissed because I was not satisfied with service, as above, this is a moot point. The salient point here is of the increasingly dubious nature of the Tenant's credibility.

The Notice indicated that \$3,649.00 was owing for rent on March 1, 2022. As well, the effective end date of the tenancy was noted as March 19, 2022.

The Landlord testified that the Tenant's January 2022 rent cheque was NSF, and he referenced the documentary evidence to support this. In addition, he stated that the Tenant did not pay any rent on February 1, 2022, but then made two \$400.00 payments between February 10 and 25, 2022. He stated that the Tenant did not pay any rent on March 1, 2022. Thus, the Notice was served for the total amount owing of \$3,649.00. As well, he submitted that the Tenant has not made any additional payments since service of the Notice. He referenced the text messages submitted as documentary evidence to support his position that the Tenant has failed to pay the rent.

The Tenant advised that it was her position that the Notice is not valid because it was not signed in the "signature of landlord/agent" box on the Notice. She confirmed that the

Landlord's name was on the Notice, that this person was in fact her Landlord, that she understood that this Notice was given to her by him, and that there was a signature on the Notice, albeit in the "name of landlord/agent" box. As such, it is her belief that this is a defective Notice.

The Landlord confirmed that the signature on the Notice was his.

She then confirmed the Landlord's submissions with respect to the rent that has not been paid, and she acknowledged that she stopped paying the rent. While she suggested that the Landlord "sabotaged" her tenancy by not providing heat, by not supplying a working stove, and by shutting off the hot water tank, she confirmed that she did not follow Section 33 of the *Act* with respect to emergency repairs, nor did she withhold the rent because she was entitled to under this Section. As well, she stated that she never made an Application through the Residential Tenancy Branch to have any of these alleged issues addressed. Moreover, there was no documentary evidence submitted to support the existence of these purported issues. She also confirmed that she had no authority under the *Act* to withhold the rent.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 26 of the *Act* states that rent must be paid by the Tenant when due according to the tenancy agreement, whether or not the Landlord complies with the tenancy agreement or the *Act*, unless the Tenant has a right to deduct all or a portion of the rent.

Should the Tenant not pay the rent when it is due, Section 46 of the *Act* allows the Landlord to serve a 10 Day Notice to End Tenancy for Unpaid Rent. Once this Notice is received, the Tenant would have five days to pay the rent in full or to dispute the Notice. If the Tenant does not do either, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenant must vacate the rental unit.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the

effective date of the Notice, state the grounds for ending the tenancy, and be in the approved form.

When reviewing the Notice, I acknowledge that the Landlord's signature is in the box immediately next to where it should have been written. However, as it is clear that the Landlord's name is on the Notice, as the Tenant acknowledged that the Landlord's name was on the Notice, and as she also confirmed that this person was her Landlord, I do not accept that she would not have known that this Notice was coming from her Landlord. Moreover, as the Tenant noted in her Application that she disputed the Notice because she was "Unable to pay because of conditions and situations beyond my control.", I find that this further supports a finding that she was not disputing the Notice because she believed it was defective, but that she was attempting to prolong the process of eviction. In addition, being "Unable to pay because of conditions and situations beyond my control" is contrary to her testimony about the Landlord "sabotaging" her tenancy, especially given that there are different provisions within the *Act* to remedy any breaches of the *Act* during a tenancy.

As the Notice contained all the required information in accordance with Section 52 of the *Act*, I do not find that the signature being written in the wrong place would render this to be an invalid or defective Notice. This document clearly contained all of the information required to constitute a valid Notice.

The undisputed evidence before me is that the Tenant received the Notice on March 9, 2022. According to Section 46(4) of the *Act*, the Tenant then had 5 days to pay the overdue rent and/or utilities or to dispute this Notice. 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 is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date."*

As the Notice was received on March 9, 2022, the Tenant must have paid the rent in full or disputed the Notice by March 14, 2022 at the latest. The undisputed evidence is that the Tenant did not pay the rent in full or dispute the Notice by this date to cancel it. Furthermore, while the Tenant did eventually dispute this Notice, it was disputed outside of the legislated timeframe. For this reason, as well as the others noted above, her Application was dismissed without leave to reapply.

As the Tenant acknowledged that she was in arrears for all of the rent, and as she did not have a valid reason under the *Act* for withholding it, I am satisfied that she breached the *Act* and jeopardized her tenancy.

As the Landlord's Notice for unpaid rent is valid, as I am satisfied that the Notice was served in accordance with Section 88 of the *Act*, and as the Tenant has not complied with the *Act*, I uphold the Notice and find that the Landlord is entitled to an Order of Possession for unpaid rent pursuant to Sections 46 and 55 of the *Act*. As such, I grant the Landlord an Order of Possession that takes effect **two days** after service of this Order on the Tenant.

Moreover, regarding the Landlord's claims for monetary compensation, based on the undisputed evidence before me, I grant the Landlord a monetary award in the amount of **\$9,581.00** for the outstanding rental arrears.

As the Tenant was not successful in this Application, I find that the Tenant is not entitled to recover the \$100.00 filing fee.

As the Landlord was successful in this Application, I find that the Landlord is entitled to recover the \$100.00 filing fee. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlord to retain the security deposit in partial satisfaction of this claim.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlord a Monetary Order as follows:

#### **Calculation of Monetary Award Payable by the Tenants to the Landlord**

Item	Amount
Rental arrears for January 2022	\$1,483.00
Rental arrears for February 2022	\$683.00
Rental arrears for March 2022	\$1,483.00
Rental arrears for April 2022	\$1,483.00
Rental arrears for May 2022	\$1,483.00
Rental arrears for June 2022	\$1,483.00
Rental arrears for July 2022	\$1,483.00
Filing fee	\$100.00
Security deposit	-\$700.00
<b>Total Monetary Award</b>	<b>\$8,981.00</b>

Conclusion

The Tenant's Applications for Dispute Resolution is dismissed without leave to reapply.

Based on the above, I grant an Order of Possession to the Landlords effective **two days after service of this Order** on the Tenant. Should the Tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

In addition, the Landlord is provided with a Monetary Order in the amount of **\$8,981.00** in the above terms, and the Tenant must be served with **this Order** as soon as possible. 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 10, 2022

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Residential Tenancy Branch