



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, FFL

### Introduction

The Landlord seeks the following relief under the *Residential Tenancy Act* (the “Act”):

- An order of possession pursuant to s. 55 after issuing a 10-Day Notice to End Tenancy signed on April 10, 2022 (the “10-Day Notice”); and
- Return of their filing fee pursuant to s. 72.

B.M. appeared as the Landlord. The Tenant did not appear, nor did someone appear on their behalf.

Pursuant to Rule 7.1 of the Rules of Procedure, the hearing began as scheduled in the Notice of Dispute Resolution. As the Tenant did not attend, the hearing was conducted in their absence as permitted by Rule 7.3 of the Rules of Procedure.

The Landlord affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The Landlord confirmed that she was not recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Landlord advised that her application materials were personally served on the Tenant on May 6, 2022. The Landlord provides a proof of service form confirming service of the application. I find that the Landlord’s application materials were served in accordance with s. 89 of the *Act*.

### Issues to be Decided

- 1) Is the Landlord entitled to an order of possession?
- 2) Is the Landlord entitled to the return of their filing fee?

### Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

The Landlord indicates that she is not the property owner and acts as the owner's behalf.

The Landlord advised that there is no written tenancy agreement with respect to this tenancy. She was uncertain when the tenancy began, though indicates that the Tenant has been occupying the rental unit for at least 10 years ago. The Landlord confirmed rent of \$532.00 is due on the first day of each month.

The Landlord indicates that the 10-Day Notice was issued as the Tenant had failed to pay rent on April 1, 2022. The Landlord testified that the Tenant was personally served with the 10-Day Notice on April 10, 2022. A copy of the 10-Day Notice was provided by the Landlord.

The Landlord testified that she did not receive an application from the Tenant disputing the 10-Day Notice and that the Tenant did not make payment of the amount listed within the 10-Day Notice at all. I am told that the Tenant has not made any rent payment since the 10-Day Notice was issued and that the Tenant continues to reside within the rental unit.

### Analysis

The Landlord seeks an order of possession.

I note that the Landlord is not the owner of the property. I do not find this distinction to be a relevant in light of the definition of a "landlord" under s. 1 of the *Act*, which includes an owner's agent or another person who, on behalf of the landlord, permits occupation of the rental unit under a tenancy agreement, or exercises powers and performs duties

under the *Act*, the tenancy agreement or a service agreement. I am satisfied that B.M. is acting as an agent for the owner based on her undisputed testimony and can properly be characterized as a landlord as per s. 1 of the *Act*.

I accept the undisputed testimony of the Landlord and find that the 10-Day Notice was personally served on the Tenant on April 10, 2022 in accordance with s. 88 of the *Act*.

I have reviewed the 10-Day Notice and find that it complies with the formal requirements of s. 52 of the *Act*. It is signed and dated by the Landlord, states the address for the rental unit, states the correct effective date, sets out the grounds for ending the tenancy, and is in the approved form (RTB-30).

Pursuant to s. 46(1) of the *Act*, where a tenant fails to pay rent when it is due, a landlord may elect to end the tenancy by issuing a notice to end tenancy that is effective no sooner than 10-days after it is received by the tenant.

When a 10-Day Notice to End Tenancy issued under s. 46 of the *Act* is received by a tenant, a tenant must, within 5-days, either pay the overdue rent or dispute the notice with the Residential Tenancy Branch. This is made clear at the very top of the 10-Day Notice to End Tenancy, which states:

#### **HOW TO DISPUTE THIS NOTICE**

You have **5 days** to pay rent and/or utilities to the landlord or file an Application for Dispute Resolution with the Residential Tenancy Branch online, in person at any Service BC Office or by going to the Residential Tenancy Branch Office at #400 - 5021 Kingsway in Burnaby. If you do not apply within the required time limit, you are presumed to accept that the tenancy is ending and must move out of the rental unit by the effective date of this Notice.

In this case, the Tenant did neither. Given this, s. 46(5) comes into effect and the Tenant is conclusively presumed to have accepted the end of the tenancy and must vacate the rental unit on the effective date. In this case, the effective date as listed in the 10-Day Notice is April 23, 2022.

As the Tenant continues to reside within the rental unit and the 10-Day Notice complies with s. 52, I find that the Landlord is entitled to an order of possession under s. 55 of the *Act*. The Landlord shall have that order.

The Landlord did not claim an order for unpaid rent under s. 67 of the *Act*. Rule 2.2 of the Rules of Procedure limits a claim to what is stated in the application. As the Landlord did not specifically seek an order for unpaid rent, I make no findings or orders with respect to any unpaid rent that may be owing.

### Conclusion

The Landlord is entitled to an order of possession under s. 55 of the *Act*. The Tenant shall provide vacant possession of the rental unit to the Landlord within **two (2) days** of receiving the order of possession.

As the Landlord was successful in their application, I find that she is entitled to her filing fee. Pursuant to s. 72(1) of the *Act*, I order that the Tenant pay the Landlord's \$100.00 filing fee.

It is the Landlord's obligation to serve the order of possession and monetary order on the Tenant. If the Tenant does not comply with the monetary order, it may be filed by the Landlord with the Small Claims Division of the Provincial Court and enforced as an order of that Court. If the Tenant does not comply with the order of possession, it may be filed by the Landlord with the Supreme Court of British Columbia 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 14, 2022

---

Residential Tenancy Branch