



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Nanaimo Affordable Housing Society  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNR-DR, OPR-DR

### Introduction

The Landlord filed an Application for Dispute Resolution via the Residential Tenancy Branch Direct Request procedure on March 14, 2022. This was for an Order of Possession pursuant to a 10 Day Notice to End Tenancy for Unpaid Rent (the “10-Day Notice”) they issued on February 25, 2022.

This participatory hearing convened after an initial Arbitrator decision of April 14, 2022. The Tenant applied for a review consideration, and another arbitrator granted a rehearing based on the Tenant’s submission that the decision of April 14, 2022 “may have been obtained by fraud.” I met with the parties on August 19, 2022 for the new hearing, pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”).

Both the Landlord and the Tenant each confirmed they received the prepared evidence of the other. On this basis the hearing proceeded as scheduled.

### Issues to be Decided

Is the Landlord entitled to an Order of Possession for unpaid rent, pursuant to s. 46 and 55 of the *Act*?

Is the Landlord entitled to compensation for unpaid rent amounts, pursuant to s. 67 of the *Act*?

### Background and Evidence

The Landlord submitted a copy of the residential tenancy agreement between the parties, signed on February 19, 2015. This provides for a basic rent amount of \$500 per month payable on the first day of each month.

The Landlord presented that there was an extra charge, payable monthly, of \$75 for a bulk service package of phone and internet. This was implemented in 2020. The Tenant obtained information about this package, submitted as evidence, to show they never signed up for this and did not agree to pay the extra amount. They submit the Landlord had taken this amount out of the Tenant's account without their knowledge or consent. The Landlord submitted the "switch" did not happen without each Tenant agreeing to it, including the Tenant here.

The Landlord described paying out an extra balance carried over from the Tenant on their previous communications package, on the Tenant's behalf.

In the Landlord's evidence are two 10-Day Notices:

- one signed by the Landlord on February 25, 2022, giving the end-of-tenancy date as March 10, 2022. Indicated on page 2 was the Tenant's failure to pay a rent amount of \$1,364.88 on February 1, 2022 and utilities amount of \$450 due on February 1, 2022. The Tenant was not aware of this 10-Day Notice, and the Landlord presented that this document was not served to the Tenant.
- the second 10-Day Notice was signed by the Landlord on February 25, 2022 giving the move-out date of March 10, 2022. This gave the amount of rent unpaid on February 1, 2022 as \$1,155. The Tenant acknowledged receiving this 10-Day Notice, along with a number of other notices to end tenancy from the Landlord.

The Landlord presented that they were working with the Tenant, as per a previous arbitrator's instructions in a prior hearing – to craft a payment plan whereby the Tenant could repay existing amounts. Neither the Landlord's initial plan, outlined in a letter dated February 17, 2022, nor their follow-up letter, dated March 4, received a response from the Tenant. In the Landlord's opinion, the "Tenant was not willing to work with the Landlord on a payment plan."

With no response from the Tenant, the Landlord issued the second 10-Day Notice listed above. The letter of March 4 gives the basic rent amount of \$575 for each month following, commencing in March 2022, the start of the proposed payment plan. The Landlord based the 10-Day Notice on the Tenant not paying the agreed upon amount.

The second page of the 10-Day Notice at issue here listed the amount of \$1,155, unpaid rent as of February 1, 2022. The Landlord described the ledger they submitted as evidence in this

matter, in an attempt to show what the \$1,155 amount consisted of. They described the ledger as showing “ad hoc payments that the Tenant was making”, and none of these payments covered the correct rent amount each month of \$575.

The Tenant presented a letter dated February 9, 2022 as the only letter that offered a payment plan. They submit they never received subsequent proposals from the Landlord. They also drew attention to a letter dated: March Jul 11<sup>th</sup> 2022” wherein the Landlord provided their evidence package to the Tenant for this dispute process: they noted in particular they had never received the letters of February 23 and March 4, 2022.

The Tenant also provided a timeline in their evidence, to show all of their understanding of rent amounts owing, as well as the number of notices to end the tenancy they received from the Landlord, starting on December 7, 2021. Fundamentally they referred to this to show that the Tenant owes no outstanding rent, and the Tenant was adamant in the hearing that they paid rent on a regular basis. In the application for review consideration, they completed after the initial Adjudicator decision in this present case, they noted “On March 23 [Landlord agent] phoned to inform me that I only owed \$800 and there was no need to go to RTB.” In their evidence for that review consideration Application, the Tenant also provided a copy of the OTHER 10-Day Notice dated February 25, 2022.

### Analysis

The *Act* s. 46(1) states that a landlord may end a tenancy if rent is unpaid on any day after the rent is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after a tenant receives the notice.

The *Act* s. 46(4) states that within 5 days of receiving a Notice a tenant may pay the overdue rent, thereby cancelling the Notice, or dispute it by filing an Application for Dispute Resolution.

I find the record shows the Tenant was not aware of the outstanding correct balance as of the date the Landlord issued the 10-Day Notice. For this reason, I cancel the 10-Day Notice and declare it of no force or effect.

The Landlord issued two 10-Day Notice documents on the same day. The Tenant presented each of these in their request for review consideration. This is conflicting messaging from the Landlord about the amount owing. The Landlord could not provide a sufficient explanation for this in the hearing.

The evidence was too confusing about the base amount of rent that the Tenant is supposed to pay. I infer that the correct amount of rent was never rectified with the Tenant since the Landlord implemented phone/internet service combined for an additional cost in 2020. That affects the rent amount and the Landlord could not provide a clear accounting of the correct amount owing in this hearing. If a part of that cost is referred to as “utilities” which appeared on the separate 10-Day Notice, that was not clear in the Landlord’s presentation here.

The Tenant did not contest the notice directly in ample time as the *Act* requires. That normally would result in an Order of Possession, but from this hearing I cannot conclude that the Tenant actually had rent amounts owing, and for that reason I find the 10-Day Notice is invalid. The onus is on the Landlord to prove this; the evidence in this hearing was insufficient to do so.

I conclude the 10-Day Notice issued on February 25, 2022 is of no force or effect and it is cancelled.

### Conclusion

For the reasons set out above, I dismiss the Landlord’s Application for an order of possession and reimbursement of rent amounts owing.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: August 19, 2022

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Residential Tenancy Branch