



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PARPIA HOLDINGS LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNDCL-S, FFL

### Introduction

The Landlord filed an Application for Dispute Resolution on April 11, 2022 seeking an order of possession of the rental unit. Additionally, they applied for recovery of unpaid rent, and the cost of the Application filing fee. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on August 9, 2022.

Both parties attended the conference call hearing; however, the Tenant entered the call 12 minutes into the scheduled hearing.

At the outset of the hearing, the Landlord stated they notified the Tenant of this hearing by serving the Notice of Dispute Resolution Hearing directly in person. This was witnessed by a third party who resides in a neighbouring unit. The Tenant did enter into the hearing; therefore, I am satisfied that the Landlord served the Tenant the notice of this hearing accordingly.

### Issue(s) to be Decided

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

Is the Landlord entitled to compensation for monetary loss or other money owed, pursuant to s. 67 of the *Act*?

Is the Landlord entitled to recover the filing fee for this Application pursuant to s. 72 of the *Act*?

### Background and Evidence

The Landlord provided a copy of the tenancy agreement in their evidence. This is a document signed by the parties on April 1, 2006. The starting rent in this rental unit was \$400 per month, payable on the first day of each month. Over the course of the tenancy, the rent increased to \$600, and very recently the rent increased to \$610 per month.

The second page of the agreement provides that the Tenant agrees to “pay a \$50 surcharge on any NSF cheque.” In the hearing, the Tenant stated they are on income assistance, and pay their rent by cash. The Landlord presented that the intent of this clause was to penalize a tenant for late payment of rent regardless of the method of payment.

The Landlord applied for an Order of Possession pursuant to the 10-Day Notice to End Tenancy for Unpaid Rent (the “10-Day Notice”). They served this to the Tenant on March 18, 2022, setting the tenancy end date for March 31, 2022. They served this by attaching a copy to the door of the rental unit. The Tenant confirmed they received this on that same day.

The Landlord provided a copy of the 10-Day Notice. It provides that the Tenant had five days from the date received to pay the rent in full or apply for dispute resolution, or the tenancy would end on the vacancy date indicated, March 31, 2022.

The reason for the Landlord issuing the 10-Day Notice, as provided on page 2 of the document, is the unpaid rent due on March 1, 2022. This amount is \$600.

In the hearing, the Tenant presented that they paid all overdue rent on the day prior to this hearing. This was the equivalent of three full months of rent. Specific to this 10-Day Notice, the Tenant could not recall whether they paid the required amount -- \$600 -- in full within 5 days as stated on the document.

The Tenant stated there was no legal basis for the Landlord charging \$50 per month for late fees. They received this input from a tenant advocacy group that they consulted with. As of the date of the hearing, the Landlord was claiming 17 times this amount, totalling \$850.

In the hearing, the Landlord re-stated their reimbursement of this Application filing fee, in addition to the filing fee from the prior Direct Request method in which their Application was dismissed.

### Analysis

From the testimony of the Landlord, I am satisfied that a tenancy agreement was in place. The agreement shows the specific term of rental payment and amount.

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.

Following this, s. 46(5) says 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 ended on the effective date of the notice and must vacate the rental unit to which the notice relates by that date.

In the hearing, the Tenant did not confirm definitively that they paid the required amount within 5 days as stated on the 10-Day Notice. I find as fact that they did not. After this, there was a series of late monthly rent payments; however, this is immaterial when I consider the requirements of the *Act*.

I find the Tenant failed to pay the rent owed in full by March 21, 2022, within the five days granted under s. 46(4) of the *Act*, and considering the 10-Day Notice deemed served 3 days after the Landlord attached it to the door on March 13, 2022, as per s. 90(c). Additionally, the Tenant did not dispute the 10-Day Notice within that five-day period.

Based on the foregoing, I find that the Tenant is conclusively presumed under s. 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 10-Day Notice, March 31, 2022.

On my review of the document, the 10-Day Notice contains the necessary elements for it to be effective; therefore, it complies with s. 52. By s. 55(1). I grant an Order of Possession to the Landlord.

The Landlord submitted that all rent amounts owing from the Tenant were paid the day prior to this hearing. The Tenant confirmed the same. I make no award for rent amounts owing for this reason.

The Landlord applied for compensation of the late rent payment fees that accumulated over the course of the tenancy. This was 17 times by their count. The Landlord did not give specifics on this amount such as a list of months unpaid or paid late. Also, my close reading of

the tenancy agreement specifies NSF fees – this is associated with cheques, and the Tenant here submitted they pay with cash, not cheques. I dismiss this piece of the Landlord's claim, without leave to reapply.

As the Landlord was successful in this application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this Application only.

### Conclusion

I grant an Order of Possession to the Landlord 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.

Pursuant to s. 67 and s 72 of the *Act*, I grant the Landlord a Monetary Order in the amount of \$100.00 for recovery of the filing fee for this hearing application. The Landlord is provided with this Order 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 s. 9.1(1) of the *Act*.

Dated: August 9, 2022

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Residential Tenancy Branch