



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

**Dispute Codes**      OPR-DR

### **Introduction**

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "**Act**") for an order of possession for non-payment of rent pursuant to section 55.

This matter was reconvened from an *ex parte*, direct request proceeding by way of an interim decision issued April 25, 2022.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 1:52 pm in order to enable the tenant to call into the hearing scheduled to start at 1:30 pm. The landlord and a witness ("**AS**") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding. I used the teleconference system to confirm that the landlord, AS, and I were the only ones who had called into the hearing.

The landlord testified that he served that the tenant personally with the interim decision, notice of reconvened hearing, the notice of dispute resolution package and his supporting documentary evidence on April 26, 2022. He testified that he served one additional piece of documentary evidence on the tenant on May 31, 2022. AS testified that she witnessed the landlord serving the tenant on both occasions. I find that the tenant has been served with the required documents in accordance with the Act.

### **Issues to be Decided**

Is the landlord entitled to an order of possession?

### **Background and Evidence**

While I have considered the documentary evidence and the testimony of the landlord, not all details of his submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord, the tenant, and the tenant's now-deceased husband entered into a written tenancy agreement starting March 1, 2016. Monthly rent was \$600. The tenant paid the landlord a security deposit of \$300, which the landlord continues to hold in trust for the tenant.

The rental unit is a single-story rancher style house located on a residential property which also includes a two-story house occupied by the landlord and AS. The landlord's house has a street address ending in 410 and the rental unit has a street address ending in 452.

The landlord testified that the tenant rented the rental unit from him shortly after he purchased the residential property. At that time, he was uncertain which of the two civic addresses related to which of the houses built on the residential property. Accordingly, on the tenancy agreement, he listed the address of the rental unit as 410. He testified that it was the intention of the parties to change the address on the tenancy agreement once they learned what the correct address was. However, they never got around to amending the tenancy agreement.

The landlord provided a letter from the regional district in which the residential property is located, confirming that the residential property has two houses located on it, each with their own civic address.

The landlord testified that at no point during the tenancy, did the tenant occupy the two-story house with the civic address ending in 410.

The landlord testified that the tenant failed to pay rent for two years. He testified that he did not issue a notice to end tenancy immediately, in light of the fact that the tenant's husband had recently passed away, and he knew that she was struggling with bills. Additionally, he testified that this was during the COVID-19 pandemic, and he did not believe he was permitted to end a tendency due to nonpayment of rent.

On March 7, 2022, he personally served the tenant with a 10-day notice to end tenancy for non payment of rent (the "**Notice**"). It specified an effective date of March 17, 2022. It stated that, as of the date of the Notice, the tenant owed \$14,400 in arrears.

The tenant did not pay this amount, nor did she dispute the Notice within five days of receiving it, or at all.

### **Analysis**

Based on the evidence presented at the hearing, I find that the civic address of the rental unit ends in 452. I accept the landlord's explanation as to why the rental unit's civic address was listed as ending in 410 on the tenancy agreement.

Based on the landlord's testimony, confirmed by AS, I find that the landlord served the tenant personally with the Notice on March 7, 2022. Section 46 of the Act states:

#### **Landlord's notice: non-payment of rent**

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

(2) A notice under this section must comply with section 52 [*form and content of notice to end tenancy*].

[...]

(4) Within 5 days after receiving a notice under this section, the tenant may

- (a) pay the overdue rent, in which case the notice has no effect, or
- (b) dispute the notice by making an application for dispute resolution.

(5) 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

- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
- (b) must vacate the rental unit to which the notice relates by that date.

The tenant did not pay the rental arrears listed on the Notice, nor did she make an application to dispute the Notice at the Residential Tenancy Branch. As such, per section 46(5) of the Act, I find that she is conclusively presumed to have accepted that the tenancy ended on March 17, 2022 (the effective date listed on the Notice).

I have reviewed the Notice and find that it complies with the form and content requirements set out at section 52 of the Act.

Accordingly, the landlord is entitled to an order of possession. At the hearing, the landlord stated that he would like the order effective 30 days after it is served on the tenant.

I order the tenant provide the landlord with vacant possession of the rental unit no later than 30 days after copy of this decision and attached order is served on the tenant by the landlord.

The landlord has not made a monetary application, nor has he applied to retain the security deposit. As such, he must deal with the security deposit in accordance with section 38 of the Act (return it to the tenant or make a further application to retain it).

### **Conclusion**

Pursuant to section 55 of the Act, I order that the tenant deliver vacant possession of the rental unit to the landlord within 30 days of being served with a copy of this decision and attached order(s) by the landlord.

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: August 12, 2022

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Residential Tenancy Branch