



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **CNR, OLC**

### Introduction

This hearing dealt with an application filed by the tenant pursuant the *Residential Tenancy Act* (the “*Act*”) for:

- An order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent/Utilities pursuant to sections 46 and 55; and
- An order for the landlord to comply with the *Act*, regulations or tenancy agreement pursuant to section 62.

The tenant did not attend the hearing although I left the teleconference connection open throughout the hearing which commenced at 9:30 a.m. and ended at 9:40 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord testified that she was not served with the tenant’s Notice of Dispute Resolution Hearing package. The landlord discovered that the tenant had filed an application when she called the Residential Tenancy Branch to get information about the notice to end tenancy. The Residential Tenancy Branch supplied her with a copy of the Notice of Dispute Resolution Hearing which provided a dispute access code to call into the hearing and upload evidence.

I find the tenant has not complied with section 59 of the *Act* which requires the person making an application for dispute resolution to give a copy of the application to the other party within 3 days of making it, or within a different period specified by the director.

### Issue(s) to be Decided

Should the notice to end tenancy be upheld or cancelled?

Should the landlord be ordered to comply with the *Act*?

### Background and Evidence

The landlord gave the following undisputed testimony. The tenancy began on March 1, 2022 with rent set at \$1,500.00 per month. A security deposit of \$750.00 was collected from the tenant which the landlord continues to hold.

The tenant paid rent for March but did not pay April's rent on the 1<sup>st</sup>. On April 3<sup>rd</sup> the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent/Utilities via email to the tenant's pre-agreed to email address for service. The landlord also testified she posted a copy of the notice to end tenancy on the tenant's door on the same day. The landlord testified that the tenant eventually paid the April arrears in rent by e-transfer on April 26<sup>th</sup>.

The tenant paid May's rent, but it was late.

For June, the tenant only paid \$1,000.00 of the rent and justified holding back the remaining \$500.00, accusing the landlord of denying the tenant access to the laundry facility. The landlord denies the access was denied and seeks to recover the outstanding June arrears. A second 10 Day Notice to End Tenancy for Unpaid Rent/Utilities was served upon the tenant which was not disputed by the tenant.

The tenant paid July's rent in full.

The tenant only paid \$750.00 in rent for the month of August, verbally advising the landlord that she intends on vacating the rental unit on September 1<sup>st</sup>.

### Analysis

The April 3<sup>rd</sup> notice to end tenancy is deemed served upon the tenant on April 6<sup>th</sup>, 3 days after it was posted to the tenant's door and 3 days after it was sent by email in accordance with sections 88 and 90 of the *Act*. The tenant filed her application to dispute the notice on April 7<sup>th</sup>, within 5 days as required under section 47 of the *Act*.

The tenant did not serve the landlord with a copy of her application to dispute the notice to end tenancy, in violation of section 59 of the *Act*. While the tenant's application can be dismissed for this reason, I must first determine whether the landlord has met their onus of showing the notice to end tenancy meets the requirement for ending the tenancy.

Section 26 of the *Act* is clear, a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent. There are five situations when a tenant may deduct money from the rent:

1. The tenant has an arbitrator's decision allowing the deduction
2. The landlord illegally increases the rent
3. The landlord has overcharged for a security or pet damage deposit
4. The landlord refuses the tenant's written request for reimbursement of emergency repairs
5. The tenant has the landlord's written permission allowing a rent reduction

The tenant did not attend this hearing to provide any valid reason to deduct or reduce her rent at the time the notice to end tenancy was served upon her on April 6<sup>th</sup>.

Although she eventually paid the arrears as shown on the notice to end tenancy on April 23<sup>rd</sup>, it was not paid within 5 days of receiving the notice as required under section 46 of the *Act*. For this reason, I uphold the notice to end tenancy and grant the landlord an Order of Possession.

I have reviewed the landlord's notice to end tenancy and find it complies with the form and content provisions set out in section 52 of the *Act*. Pursuant to section 68(1), I amend the notice to end tenancy to change the unit # shown on the notice to end tenancy from (2 bedrooms) to (basement) to match the tenant's application for dispute resolution. Pursuant to section 53, the effective date is automatically changed from April 13, 2022 to April 16, 2022.

As the effective date has passed, the landlord is entitled to an Order of Possession effective 2 days after service upon the tenant.

Pursuant to section 55(1.1), the director must grant the landlord an order requiring the payment of unpaid rent when a tenant disputes a notice to end tenancy for unpaid rent and the director upholds the landlord's notice. I find the tenant paid April and May 2022's rent, but is in arrears of \$500.00 for the month of June 2022. The tenant has paid July's rent and rent for August until August 15<sup>th</sup>. As half of August's rent has been paid at the time of this hearing (August 9<sup>th</sup>), I decline to award the landlord any further compensation.

The landlord continues to hold the tenant's security deposit. In accordance with the offsetting provisions of section 72, the landlord may retain \$500.00 of the tenant's \$750.00 security deposit in full satisfaction of the monetary order.

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenants or anyone on the premises fail to comply with this Order, this Order may be filed and enforced in the Supreme Court of British Columbia.

The landlord is to retain \$500.00 of the tenant's \$750.00 security deposit pursuant to section 72 of the *Act*.

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 09, 2022

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Residential Tenancy Branch