



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPC, OPR, MNRL-S, FFL

### Introduction

On April 22, 2022, the Landlord applied for a Dispute Resolution proceeding seeking an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent pursuant to Section 46 of the *Residential Tenancy Act* (the “*Act*”), seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On July 26, 2022, the Landlord amended her Application seeking an Order of Possession based on a One Month Notice to End Tenancy for Cause pursuant to Section 47 of the *Act*.

The Landlord attended the hearing, with T.N. attending as an agent for the Landlord; however, the Tenant did not attend at any point during the 39-minute teleconference. At the outset of the hearing, I informed the parties that recording of the hearing was prohibited and they were reminded to refrain from doing so. As well, they provided a solemn affirmation.

The Landlord advised that the Notice of Hearing package and some evidence was served to the Tenant by hand on May 5, 2022, and T.N. confirmed that he witnessed this. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenant was duly served the Landlord’s Notice of Hearing package with some evidence.

She then advised that the Amendment package and some additional evidence was served to the Tenant by email on July 26, 2022; however, she did not fill out the form where the parties consented to exchange documents by email. She referenced the

email sent to the Tenant on July 26, 2022, with the Amendment and evidence, and then she referenced the text message that same day where the Tenant was advised that she was emailed some documents, and the Tenant confirmed that she received them. Based on this undisputed evidence, I am satisfied that the Tenant was, more likely than not, served the Landlord's Amendment and additional evidence. As such, all of the Landlord's evidence will be accepted and considered when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession on either notice to end tenancy?
- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to recover the filing fee?

#### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Landlord advised that the tenancy started on September 15, 2016, that rent was established at \$2,600.00 per month, and that it was due on the first day of each month. However, she indicated that she illegally increased the rent to \$2,650.00 per month as of January 1, 2022. She stated that a security deposit of \$1,300.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

She stated that the 10 Day Notice to End Tenancy for Unpaid Rent was served to the Tenant by hand on April 7, 2022, and T.N. confirmed that he witnessed this service. The effective end date of the tenancy was noted as April 17, 2022. She acknowledged that she did not sign this notice.

She then testified that the One Month Notice to End Tenancy for Cause (the "Notice") was served to the Tenant by hand on June 29, 2022, and it was confirmed that T.N. witnessed this service. The reason the Landlord served the Notice was because "The Tenant is repeatedly late paying rent." The effective end date of the tenancy was noted as July 31, 2022 on the Notice. She stated that the Tenant did not make an Application to dispute the Notice.

She advised that the Tenant had paid many months of rent sporadically, but more specifically, the Tenant did not pay rent for January, February, March, April, May, or June 2022 on the first day of those months, as required by the tenancy agreement. She referenced her documentary evidence submitted to support this position.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 52 of the *Act* requires that any notice to end tenancy issued by a Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

In considering this matter, I have reviewed the 10 Day Notice to End Tenancy for Unpaid Rent and I note that it is not signed by the Landlord. As well, given that the Landlord imposed an illegal rent increase, the amount of rent outstanding on this notice is not correct either. As such, I find that this is not a valid notice, and it is cancelled with no force or effect. The Landlord's request for an Order of Possession for unpaid rent is dismissed without leave to reapply. However, the Landlord's request for a Monetary Order for unpaid rent is dismissed with leave to reapply.

With respect to the One Month Notice to End Tenancy for Cause, I have reviewed the Notice, and I am satisfied that the Notice meets all of the requirements of Section 52. As such, I find that it is a valid Notice.

The undisputed evidence before me is that the Notice was served to the Tenant by hand on June 29, 2022. After being served the Notice, there is no evidence that the

Tenant made an Application to dispute this Notice. I find it important to note that the information with respect to the Tenant's right to dispute the Notice is provided on the first page of the Notice.

Ultimately, as the Tenant did not dispute the Notice, I am satisfied that the Tenant is conclusively presumed to have accepted the Notice. As such, I find that the Landlord is entitled to an Order of Possession. Ultimately, I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant.

As the Landlord was successful in this Application, I find that the Landlord is entitled to recover the \$100.00 filing fee. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlord to retain this amount from the security deposit in satisfaction of this claim.

### Conclusion

I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant. This Order must be served on the Tenant by the Landlord. 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.

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 23, 2022

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Residential Tenancy Branch