



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR-MT, RP

### Introduction

This hearing dealt with the tenant's application, filed on June 22, 2022, pursuant to the *Residential Tenancy Act* ("Act") for:

- more time to make an application to cancel the landlord's Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, dated June 15, 2022 ("first 10 Day Notice"), pursuant to section 66;
- cancellation of the landlord's first 10 Day Notice, pursuant to section 46; and
- an order requiring the landlord to complete repairs to the rental unit, pursuant to section 32.

The tenant did not attend this hearing, which lasted approximately 20 minutes. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

This hearing began at 11:00 a.m. and ended at 11:20 a.m. I monitored the teleconference line throughout this hearing. 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 people who called into this teleconference.

The landlord confirmed the names and spelling for him and the tenant. He provided his email address for me to send this decision to him after this hearing. He confirmed that he owns the rental unit. He provided the rental unit address.

Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* ("*Rules*") does not permit recording of this hearing by any participant. At the outset of this hearing, the landlord affirmed, under oath, that he would not record this hearing.

I explained the hearing process to the landlord. He had an opportunity to ask questions, which I answered. He did not make any adjournment or accommodation requests. He confirmed that he was ready to proceed with this hearing.

The landlord stated that he did not receive the tenant's application for dispute resolution hearing package. He said that he found out about this hearing when he called the RTB and was provided with a courtesy copy of the notice of dispute resolution proceeding with the phone number and access code to call into this hearing.

The landlord testified that he personally served a copy of his written evidence package to the tenant on August 20, 2022. In accordance with section 88 of the Act, I find that the tenant was personally served with the landlord's evidence on August 20, 2022. I considered the landlord's evidence at this hearing and in my decision because it was received by the tenant at least 7 days prior to this hearing on August 29, 2022, in accordance with Rule 3.15 of the RTB *Rules*.

The landlord testified that he personally served the tenant with the first 10 Day Notice on June 15, 2022. He confirmed that the first 10 Day Notice indicates an effective move-out date of June 25, 2022. In accordance with section 88 of the Act, I find that the tenant was personally served with the landlord's first 10 Day Notice on June 15, 2022. The tenant confirmed that she personally received the first 10 Day Notice on June 15, 2022, in this application.

The landlord testified that he personally served the tenant with a second 10 Day Notice, dated July 4, 2022 ("second 10 Day Notice") on the same date. He provided a signed, witnessed proof of service, which states that he personally served the above notice to the tenant and another person witnessed it. He confirmed that the second 10 Day Notice indicates an effective move-out date of July 14, 2022. In accordance with section 88 of the Act, I find that the tenant was personally served with the landlord's second 10 Day Notice on July 4, 2022.

#### Preliminary Issue – Dismissal of Tenant's Application

Rule 7.3 of the RTB *Rules* provides as follows:

*7.3 Consequences of not attending the hearing: If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in*

*the absence of that party, or dismiss the application, with or without leave to re-apply.*

In the absence of any evidence or submissions from the tenant, I order the tenant's entire application dismissed without leave to reapply.

Pursuant to section 55 of the *Act*, if I dismiss the tenant's application to cancel a 10 Day Notice, the landlord is entitled to an order of possession and monetary order for unpaid rent, if the notice meets the requirements of section 52 of the *Act*.

### Issues to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

Is the landlord entitled to a monetary order for unpaid rent?

### Background and Evidence

While I have turned my mind to the landlord's documentary evidence and the testimony of the landlord at this hearing, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below.

The landlord testified regarding the following facts. This tenancy began on December 23, 2019. Monthly rent in the amount of \$1,295.00 is payable on the first day of each month. A security deposit of \$647.00 was paid by the tenant and the landlord continues to retain this deposit in full. A written tenancy agreement was signed by both parties and a copy was provided for this hearing. The tenant continues to occupy the rental unit and has a bed there. The tenant has moved out most of her belongings from the rental unit but has not left because her new place did not work out. The tenant's guest is living in the landlord's driveway.

The landlord stated the following facts. He issued the first 10 Day Notice for unpaid rent of \$1,420.00 (\$1,295.00 for June 2022 and \$125.00 from May 2022) due on June 1, 2022. He mistakenly indicated June 1, 2021, as the due date, instead of June 1, 2022. He made an error when he indicated the rental unit address as "2" instead of "3." The tenant paid the full rent amount of \$1,420.00 on June 28, 2022. He issued the second 10 Day Notice for unpaid rent of \$1,295.00 due on July 1, 2022, which is still outstanding. The tenant has not paid rent of \$1,295.00 to the landlord for July and

August 2022, totalling \$2,590.00. The landlord seeks an order of possession based on the two 10 Day Notices. The landlord also seeks a monetary order of \$2,590.00 total for unpaid rent from July to August 2022.

### Analysis

#### Order of Possession

According to subsection 46(4) of the *Act*, a tenant may dispute a 10 Day Notice by making an application for dispute resolution within five days after the date the tenant received the notice.

The tenant stated that she personally received the first 10 Day Notice on June 15, 2022. The tenant filed this application on June 22, 2022, which was not within the five-day time limit to dispute the first 10 Day Notice. The tenant applied for more time to dispute the first 10 Day Notice, but she did not appear at this hearing to present her application. The tenant did not show exceptional circumstances prevented her from filing her application in a timely manner, as required by section 66 of the *Act*.

The tenant did not dispute the second 10 Day Notice or appear at this hearing to present her submissions.

Section 26 of the *Act* requires the tenant to pay rent on the date indicated in the tenancy agreement, which in this case, is the first day of each month.

On a balance of probabilities, I accept the landlord's undisputed evidence at this hearing, as the tenant did not attend. The tenant failed to pay the full rent due on June 1, 2022 and July 1, 2022, within five days of receiving both 10 Day Notices. The tenant paid rent of \$1,420.00 for May and June 2022 late on June 28, 2022. The tenant has not paid the July or August 2022 rent of \$1,295.00 for each month, totalling \$2,590.00.

In accordance with section 46(5) of the *Act*, the failure of the tenant to pay the full rent within five days or to appear at this hearing to pursue her application, led to the end of this tenancy on June 25, 2022, the effective date on the first 10 Day Notice. In this case, this required the tenant and anyone on the premises to vacate the premises by June 25, 2022.

Section 55(1) of the *Act* reads as follows:

*55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if*

- (a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and*
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.*

As noted above, I dismissed the tenant's entire application.

Section 52 of the Act states as follows:

*Form and content of notice to end tenancy*

*52 In order to be effective, a notice to end a tenancy must be in writing and must*

- (a) be signed and dated by the landlord or tenant giving the notice,*
- (b) give the address of the rental unit,*
- (c) state the effective date of the notice,*
- (d) except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy,*
  - (d.1) for a notice under section 45.1 [tenant's notice: family violence or long-term care], be accompanied by a statement made in accordance with section 45.2 [confirmation of eligibility], and*
- (e) when given by a landlord, be in the approved form.*

The landlord indicated the wrong rental unit number and the wrong year for the rent due date in the first 10 Day Notice. However, I find that these were minor, inadvertent errors made by the landlord, as per his testimony at this hearing, and they do not invalidate the notice.

Therefore, I find that the landlord's first 10 Day Notice complies with section 52 of the Act, as the signature and date of the notice are correct, along with the effective date, the reason for ending the tenancy (rent amount due), the rental unit street and city address, and it is given in the approved form. I find that the tenant received the landlord's first 10 Day Notice, reviewed it, disputed it in this application, and had proper notice of the correct amount of rent due on June 1, 2022 (rather than 2021) for her rental unit (unit 3, not 2). The tenant stated in her application that she did not pay the rent and she required more time to do so.

I find that the landlord's second 10 Day Notice complies with section 52 of the *Act*, as it indicates the correct rental unit address, rent due date, signature and date of the notice, the effective date, and the reason for ending the tenancy (rent amount due), and it is given in the approved form.

For the above reasons, I find that the landlord is entitled to an Order of Possession effective two (2) days after service on the tenant.

### Monetary Order

Section 55(1.1) of the *Act* states the following:

*55(1.1) If an application referred to in subsection (1) is in relation to a landlord's notice to end a tenancy under section 46 [landlord's notice: non-payment of rent], and the circumstances referred to in subsection (1) (a) and (b) of this section apply, the director must grant an order requiring the payment of the unpaid rent.*

Effective on March 25, 2021, the landlord is entitled to a monetary order for unpaid rent without filing a separate application. The tenant filed this application on June 22, 2022. As noted above, the tenant's application to cancel the first 10 Day Notice was dismissed without leave to reapply. As noted above, the landlord's two 10 Day Notices comply with section 52 of the *Act*, and I have upheld both notices.

As per section 26 of the *Act*, the tenant is required to pay rent on the first day of each month. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

The landlord provided undisputed evidence that the tenant failed to pay rent of \$1,295.00 for each month from July to August 2022, totalling \$2,590.00. Although this hearing occurred on August 29, 2022, I find that the rent was due on August 1, 2022, so the tenant owes rent for the full month of August 2022. Therefore, I find that the landlord is entitled to \$2,590.00 in rental arrears from the tenant.

The landlord continues to hold the tenant's security deposit of \$647.00. In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenant's entire security deposit of \$647.00, in partial satisfaction of the monetary award. No interest is payable on the deposit over the period of this tenancy.

Conclusion

The tenant's entire application is dismissed without leave to reapply.

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

I order the landlord to retain the tenant's entire security deposit of \$647.00 in partial satisfaction of the monetary award.

I issue a monetary order in the landlord's favour in the amount of \$1,943.00 against the tenant. 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: August 29, 2022

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Residential Tenancy Branch