



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR

### Introduction

The Tenants seek an order pursuant to ss. 62(2) and 46 of the *Residential Tenancy Act* (the “Act”) to cancel a 10-Day Notice to End Tenancy signed on June 3, 2022 (the “10-Day Notice”).

A.P. appeared as the Landlord. The Tenants did not attend the hearing, nor did someone attend on their behalf.

Pursuant to Rule 7.1 of the Rules of Procedure, the hearing began as scheduled in the Notice of Dispute Resolution. As the Tenants did not attend, the hearing was conducted in their absence as permitted by Rule 7.3 of the Rules of Procedure and concluded at 9:40 AM without the Tenants’ participation.

The Landlord affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The Landlord confirmed that they were not recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Landlord acknowledged receipt of the Notice of Dispute Resolution but denied receipt of any response evidence from the Tenants. Based on the Landlord’s acknowledged receipt, I find that pursuant to s. 71(2) of the *Act* that the Landlord was sufficiently served with the Notice of Dispute Resolution.

As the Tenants did not attend the hearing to demonstrate service of their evidence as required under Rule 3.5 of the Rules of Procedure and as the Landlord specifically denied receipt of their evidence, I find that the Tenants evidence was not served. As

such, I find it would be procedurally unfair to the Landlord to include and consider it as it was not served.

The Landlord advised having served her response evidence on the Tenants to a pre-agreed email sent on October 8, 2022. I find that the Landlord's evidence was served by way of email in accordance with s. 89(1)(f) of the *Act* and s. 43 of the *Regulations*. Pursuant to s. 44 of the *Regulations*, I deem that the Tenants received the Landlord's evidence on October 11, 2022.

### Issues to be Decided

- 1) Should the 10-Day Notice be cancelled?
- 2) If not, is the Landlord entitled to an order of possession and an order for unpaid rent?

### Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

The Landlord confirmed the following details with respect to the tenancy:

- The Tenants took possession of the rental unit on May 1, 2022.
- Rent of \$1,200.00 is payable on the first day of each month.
- The Tenants paid a security deposit of \$600.00 to the Landlord.

The Landlord provided a copy of the tenancy agreement confirming this information. On the last page of the tenancy agreement, it indicates email is an approved form of service between the parties.

The Landlord testified that the Tenants failed to pay rent on June 1, 2022 and having served the 10-Day Notice on the Tenants on June 3, 2022 by way of email. A copy of the 10-Day Notice was put into evidence by the Landlord.

The Landlord further testified that the Tenants did not pay rent for June 2022 at all and that the Tenants have not paid rent for July, August, September, and October 2022. The Landlord's evidence includes a ledger indicating arrears in rent of \$6,000.00, including late fees totalling \$125.00 (\$25.00 for each month late).

The Landlord confirmed that the Tenants continue to reside within the rental unit.

### Analysis

The Tenants apply to cancel the 10-Day Notice.

Pursuant to s. 46(1) of the *Act*, where a tenant fails to pay rent when it is due, a landlord may elect to end the tenancy by issuing a notice to end tenancy that is effective no sooner than 10-days after it is received by the tenant. Pursuant to s. 46(4) of the *Act*, a tenant has 5-days from received a 10-day notice to end tenancy to either pay the overdue rent or file an application to dispute the notice. If a tenant files to dispute the notice, the burden of proving it was issued in compliance with s. 46 of the *Act* rests with the respondent landlord.

I accept the Landlord's undisputed testimony that the 10-Day Notice was served on the Tenants to their pre-arranged email address on June 3, 2022. I find that the 10-Day Notice was served in accordance with s. 88 of the *Act*. Pursuant to s. 44 of the Regulations, I deem that the Tenants received the 10-Day Notice on June 6, 2022.

Upon review of the information on file and in consideration of Rule 2.6 of the Rules of Procedure, I find that the Tenants filed their application on June 8, 2022. Accordingly, I find that the Tenants filed their application within the 5-day window imposed by s. 46(4) of the *Act*.

As per s. 46(2) of the *Act*, all notices issued under s. 46 must comply with the form and content requirements set by s. 52 of the *Act*. I have reviewed the 10-Day Notice and find that it complies with the formal requirements of s. 52 of the *Act*. It is signed and dated by the Landlord, states the address for the rental unit, states the correct effective date, sets out the grounds for ending the tenancy, and is in the approved form (RTB-30).

I accept the Landlord's undisputed testimony that the Tenants have failed to pay rent on June 1, 2022 as required under the tenancy agreement and that she has not received rent for June 2022 at all. I find that the Tenants breached their obligation to pay rent pursuant to the tenancy agreement and in breach of their obligation under s. 26 of the *Act*. I find that the 10-Day Notice was properly issued. Accordingly, I dismiss the Tenants application to cancel the 10-Day Notice.

Section 55(1) of the *Act* provides that where a tenant's application to cancel a notice to end tenancy is dismissed and the notice complies with s. 52, then I must grant the landlord an order for possession. As that has occurred here and the Tenants continue to reside within the rental unit, I find that the Landlord is entitled to an order of possession under s. 55(1) of the *Act* and shall receive that order.

Pursuant to s. 55(1.1) of the *Act*, if a tenant's application to cancel a notice to end tenancy for unpaid rent is dismissed and the notice complies with the formal requirements of s. 52, then the Director must grant an order for unpaid rent. In accordance with Policy Guideline 3, an order for unpaid rent is limited to rent owed during the tenancy and does not include compensation for an overholding tenant. Where a tenant continues to reside in the rental unit and is unsuccessful in disputing a notice to end tenancy at the hearing, the tenancy ends on the date of the tenant's hearing as ordered by the Director in accordance with s. 68(2) of the *Act*.

Accordingly, I find that the tenancy ends on today's date. I accept the Landlord's undisputed evidence that the Tenants failed to pay rent for June, July, August, September, and October 2022. The Landlord seeks late fees of \$25.00 per month imposed by clause 10 of the tenancy agreement. However, late fees cannot be considered "unpaid rent" as contemplated by s. 55(1.1) of the *Act* as they are not rent payable under the tenancy agreement but are a secondary obligation arising from the failure to pay rent on time. In other words, it cannot be ordered under s. 55(1.1) of the *Act*. As such, I make no order for the late fees and the Landlord is at liberty to file an application in which that is claimed if they so wish.

I find that the Landlord is entitled to an order for unpaid rent totalling \$6,000.00 (\$1,200.00 x 5). I exercise my discretion under s. 72(2) of the *Act* and direct that the Landlord withhold the security deposit of \$600.00 in partial satisfaction of the total arrears in unpaid rent.

### Conclusion

The Tenants application to cancel the 10-Day Notice is dismissed without leave to reapply.

The Landlord is entitled to an order of possession pursuant to s. 55(1) of the *Act*. The Tenants shall provide vacant possession of the rental unit to the Landlord within **two (2) days** of receiving the order of possession.

The Landlord is entitled to an order for unpaid rent pursuant to s. 55(1.1) of the *Act* and has established total arrears in rent of \$6,000.00. I direct pursuant to s. 72(2) of the *Act* that the Landlord withhold the Tenants' \$600.00 security deposit in partial satisfaction of the total amount owed by the Tenants.

Pursuant to ss. 55, 72, and 67 of the *Act*, I order that the Tenants pay **\$5,400.00** to the Landlord (\$6,000.00 - \$600.00).

It is the Landlord's obligation to serve the order of possession and monetary order on the Tenants. If the Tenants do not comply with the order of possession, it may be filed by the Landlord with the Supreme Court of British Columbia and enforced as an order of that Court. If the Tenants do not comply with the monetary order, it may be filed by the Landlord with 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: October 24, 2022

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Residential Tenancy Branch