



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding KI-LOW-NA FRIENDSHIP SOCIETY  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR

### Introduction

This hearing dealt with the Tenant's application under the *Residential Tenancy Act* (the "Act") to dispute a 10 Day Notice to End Tenancy for Unpaid Rent dated September 12, 2022 (the "10 Day Notice") pursuant to section 46.

The Landlord's agent RW attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The Tenant did not attend this hearing. I left the teleconference hearing connection unlocked until 11:10 am in order to enable the Tenant to call into the hearing scheduled to start at 11:00 am. I confirmed that the correct call-in numbers and participant access code had been provided in the notice of dispute resolution proceeding. I used the teleconference system to confirm that RW and I were the only ones who had called into the hearing.

I informed RW that the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure") prohibit unauthorized recordings of dispute resolution hearings.

### Preliminary Matter – Amendment of Style of Cause

This application initially listed two applicants, one of whom is the Tenant. RW confirmed that the Tenant is the only tenant on the tenancy agreement and that the other applicant is the Tenant's child. The parties' names on tenancy agreement submitted into evidence also show deviations in spelling from their names as listed on this application.

Based on the tenancy agreement and RW's testimony, I have removed the Tenant's child as an applicant and updated the style of cause to correct the parties' names.

#### Preliminary Matter – Service of Dispute Resolution Documents

RW acknowledged receipt of the Tenant's notice of dispute resolution proceeding package and evidence (collectively, the "NDRP Package"). I find the Landlord was served with the NDRP Package in accordance with sections 88 and 89 of the Act.

RW testified she and a witness NF gave a copy of the Landlord's evidence to the Tenant in person on October 26, 2022. Based on RW's undisputed testimony, I find the Tenant was served with the Landlord's evidence in accordance with section 88 of the Act.

#### Preliminary Matter – Tenant's Non-attendance

Rule 7.3 of the Rules of Procedure 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 reapply.

As the Tenant did not attend this hearing while the Landlord's agent duly attended, I directed that the hearing be conducted in the absence of the Tenant.

RW confirmed the Tenant is still residing in the rental unit. RW explained the Tenant has been struggling with addiction. RW confirmed the Landlord only seeks an Order of Possession under the 10 Day Notice and not to recover the unpaid rent owed by the Tenant. As such, I find it is not necessary to consider the issue of a Monetary Order for the Landlord under section 55(1.1) of the Act in this application.

#### Issue to be Decided

1. Is the Tenant entitled to cancel the 10 Day Notice?
2. Is the Landlord entitled to an Order of Possession?

### Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony presented, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of this application and my findings are set out below.

This tenancy commenced on March 1, 2021 and is month-to-month. Rent is \$976.00 due on the first day of each month. The Tenant paid a security deposit of \$488.00 which is held by the Landlord.

RW confirmed that a copy of the 10 Day Notice was sent to the Tenant via email on September 12, 2022. The Tenant's application indicates that the 10 Day Notice was received on this date.

A copy of the 10 Day Notice has been submitted into evidence. The 10 Day Notice is signed by RW on behalf of the Landlord and has an effective date of September 30, 2022. It states the Tenant failed to pay rent of \$976.00 due on September 1, 2022.

RW testified the Tenant attempted to make a partial payment of \$500.00 on September 20, 2022. RW confirmed she had informed the Tenant that the Landlord was still proceeding with the 10 Day Notice.

### Analysis

Based on RW's testimony and the Tenant's application which acknowledges that the 10 Day Notice was received on September 12, 2022, I find the Tenant was served with a copy of the 10 Day Notice in accordance with section 88(g) of the Act on September 12, 2022.

Section 46(4) of the Act states that within 5 days after receiving a notice under this section, a tenant may pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution.

In this case, I find the deadline for the Tenant to pay the overdue rent or dispute the 10 Day Notice was September 17, 2022.

I accept RW's undisputed testimony that the Tenant tried to make a partial payment of rent in the amount of \$500.00 on September 20, 2022. Based on the Landlord's evidence, I find the Tenant did not pay the overdue rent of \$976.00 within 5 days of receiving the 10 Day Notice to cancel the notice.

Furthermore, records from the Residential Tenancy Branch indicate that the Tenant applied to dispute the 10 Day Notice on September 28, 2022. I find the Tenant did not apply to dispute the 10 Day Notice within the 5-day period under section 46(4) either.

Under section 66(1) of the Act, the director may extend a time limit established by the Act in exceptional circumstances. However, the Tenant did not apply for more time to dispute the 10 Day Notice in this application or indicate any exceptional circumstances.

Section 46(5) of the Act states that 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 by that date.

I conclude the Tenant failed to pay rent of \$976.00 to the Landlord due on September 1, 2022 and did not pay the overdue rent or make an application for dispute resolution by September 17, 2022. I find the Tenant is conclusively presumed to have accepted that the tenancy ended on September 30, 2022, the effective date of the 10 Day Notice.

Accordingly, I dismiss the Tenant's application to dispute the 10 Day Notice without leave to re-apply.

Section 55(1) of the Act states:

**Order of possession for the landlord**

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.

Section 52 of the Act states:

**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.

I have reviewed a copy of the 10 Day Notice and find that it complies with the requirements of section 52 in form and content. As noted above, the Tenant's application to dispute the 10 Day Notice is dismissed without leave to re-apply.

I find the Landlord is entitled to an Order of Possession under section 55(1) of the Act. Since the effective date of the 10 Day Notice has already passed, I grant the Landlord an Order of Possession effective two (2) days after service upon the Tenant.

Conclusion

The Tenant's application is dismissed without leave to re-apply.

Pursuant to section 55(1) of the Act, I grant an Order of Possession to the Landlord effective **two (2) days** after service upon 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 Supreme Court of British Columbia 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: November 09, 2022

---

Residential Tenancy Branch