



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding FIRST SERVICE RESIDENTIAL  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR OLC

### Introduction

This hearing dealt with an Application for Dispute Resolution (application) by the tenant seeking remedy under the *Residential Tenancy Act* (Act) to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated June 10, 2022 (10 Day Notice) and for an order directing the landlord to comply with the Act, regulation or tenancy agreement. The filing fee was waived.

The tenant and two agents landlord, DL and AU (agents) attended the teleconference hearing and gave affirmed testimony. The parties were advised of the hearing process and were given the opportunity to ask questions about the hearing process during the hearing. A summary of the testimony and evidence is provided below and includes only that which is relevant to the hearing. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Both parties confirmed being served with documentary evidence prior to the hearing. The parties also confirmed that they had the opportunity to review that evidence prior to the hearing. Based on the above, I find the parties were sufficiently served in accordance with the Act.

### Preliminary and Procedural Matters

Both parties confirmed their respective email addresses. Both parties were advised that the Decision would be emailed to them.

In addition, the agents requested to have a future scheduled hearing joined with this hearing, which the agents stated was for unpaid rent. The parties were advised that I would not be joining the applications as I could deal with unpaid rent at this hearing, if

any. The landlord is at liberty to cancel their future hearing related to unpaid rent as a result.

### Issues to be Decided

- Should the 10 Day Notice be cancelled or upheld?
- Should the landlord be ordered to comply with the Act, regulation or tenancy agreement?

### Background and Evidence

A copy of the tenancy agreement was submitted in evidence. The tenancy began on February 1, 2019. According to the Notice of Rent Increase forms submitted for my consideration and based on the testimony of the agents, I find that monthly rent is \$1,665 per month. The tenant claims they were paying \$1,661 per month, which I will address later in this Decision.

The tenant confirmed that on June 10, 2022 they were served with the 10 Day Notice. The tenant filed their application to dispute the 10 Day Notice on June 15, 2022. The 10 Day Notice indicates that \$2,566 was owing as of June 1, 2022. The tenant confirmed that since filing their application they have not paid any rent and has plans to vacate the rental unit on Tuesday.

The tenant writes in their application that they did not pay rent as the rental unit was supposed to come with blinds and that the blinds were broken when the tenant moved in. The tenant also alleged the landlord did not fix the blinds. The tenant also mentions mould in their application.

The landlord presented the tenant ledger in support of the \$10,891 amount of rent arrears as of the date of the hearing. The agents confirmed that the tenant failed to pay July, August, September, October and November 2022 rent in addition to what is listed on the 10 Day Notice.

The tenant continues to occupy the rental unit. The landlord is seeking a 2-day order of possession and a monetary order for \$10,891.

### Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

As the tenant admitted to not paying rent since disputing the 10 Day Notice, section 26 of the Act applies and states the following:

**26(1) 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.

[emphasis added]

The tenant failed to provide any supporting evidence that the monthly rent was \$1,661. I find the monthly rent was \$1,665 as supported by the Notice of Rent Increase documents before me.

The tenant also failed to provide any evidence that they had a right to deduct all or a portion of rent. Therefore, I dismiss the tenant's application to cancel the 10 Day Notice and I uphold the 10 Day Notice. I find the 10 Day Notice also complies with section 52 of the Act.

As the effective vacancy date of the 10 Day Notice has passed and no rent has been paid by the tenant for many months, I grant the landlord an order of possession effective two (2) days after service on the tenant. I find the tenancy ended on June 20, 2022, which was the effective vacancy date listed on the 10 Day Notice.

Section 55(1.1) of the Act applies and states:

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.**

[emphasis added]

Pursuant to section 55(1.1) of the Act, I grant the landlord **\$10,891** for rent arrears.

## Conclusion

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

The 10 Day Notice is upheld. The landlord is granted an order of possession effective two (2) days after service on the tenant. Should the tenant fail to comply with the order of possession once served by the landlord, the landlord may apply to enforce the order of possession in the Supreme Court of British Columbia.

The tenant is reminded that they can be held liable for all costs related to enforcing an order of possession, including bailiff fees.

The landlord is granted a monetary order of \$10,891 for rent arrears. The monetary order will be emailed to the landlord only for service on the tenant. Should the landlord require enforcement of the monetary order, the order must be first served on the tenant with a demand for payment letter and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. I caution the tenant that they can be held liable for all costs related to enforcement of the monetary order.

This decision will be emailed to both parties at the email addresses confirmed by the parties during the hearing. The monetary order will be emailed to the landlord only for service on the tenant.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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 3, 2022

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Residential Tenancy Branch