



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

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## DECISION

Dispute Codes      CNC CNR

### Introduction

The tenant seeks an order cancelling a *10 Day Notice to End Tenancy for Unpaid Rent* (the “Notice”) pursuant to section 46 of the *Residential Tenancy Act* (the “Act”).

The tenant also seeks an order cancelling a *One Month Notice to End Tenancy for Cause* (the “Notice for Cause”) pursuant to section 47 of the Act.

A hearing was convened on November 25, 2022 and both parties attended. The parties took an oath to tell the truth before they provided any testimony in this proceeding.

### Preliminary Issue: Service of Evidence

The tenant testified that he attempted to serve his documentary evidence on the landlord but that the landlord was away on a trip to Africa and therefore he did not end up serving her. He did not make any further attempt to serve his evidence by any other means. Given that the tenant did not serve his documentary evidence upon the landlord I am unable to accept or consider any of it.

The landlord testified that she served a copy of her evidence upon the tenant and the tenant confirmed that he received the landlord’s evidence on November 10, 2022.

### Preliminary Issue 2: Notice for Cause

Given the limited time in which to conduct this hearing the landlord chose to pursue the issue of the *10 Day Notice to End Tenancy for Unpaid Rent*. The Notice for Cause, therefore, was not considered in this application.

### Issue

Is the tenant entitled to an order cancelling the Notice?

### Background and Evidence

Relevant evidence, complying with the *Rules of Procedure*, was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the issue of this dispute, and to explain the decision, is reproduced below.

The landlord testified that the tenancy began in July 2017. Rent is currently \$1,690 per month and this is due on the first day of the month. The tenant paid a \$825 security deposit; there is no pet damage deposit. The landlord submitted a copy of the written residential tenancy agreement into evidence. The information contained on the residential tenancy agreement mirrors the oral evidence given by the landlord.

The landlord further testified that she issued the Notice in person on the tenant on July 4, 2022. A copy of the Notice was provided into evidence and indicated that rent as of July 1, 2022 was in the amount of \$3,380.00.

Finally, the landlord testified that as of November 25, 2022, rent arrears are in the amount of \$10,140.00.

The tenant testified that there was no issue with rent until he gave the landlord notice that he was ending a non-residential tenancy of a barn which is located on the property. The commercial tenancy that is in place between him and the landlord in respect of the barn is separate from the residential tenancy.

The tenant testified that he *did* pay rent for June and that he also paid \$550 of July's rent. He said that he tried to pay the landlord rent but that she refused. She instead tried to have him sign a mutual agreement to end the tenancy and then when he refused, she handed him the two notices to end tenancy.

Regarding the amount of arrears, the tenant testified that he would dispute this amount because the landlord had purportedly limited his use of the rental property. The landlord had curtailed the use of more than three acres that were supposed to be included in the tenancy. The tenant said that he was never issued any receipts for rent payments and thus he was "not sure where we're at with the arrears [amount]."

In rebuttal, the landlord testified that the tenant has a long history of late rent payments. She provided documentary evidence of this history of late rent payments. And the landlord reiterated that the tenant has not paid any rent since June of 2022. Last, the landlord noted that the barn is not a part of the residential tenancy.

## Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the landlord who issued a notice to end a tenancy that was disputed by the tenant.

Section 26 of the Act states that a tenant must pay rent when it is due under the tenancy agreement unless the tenant has a right under the Act to deduct all or a portion of the rent. The tenancy agreement for this tenancy requires that the tenant pay rent on the first day of the month.

In respect of the tenant's claims that he chose not to pay rent (or, that he disputes the amount of the arrears) being founded on a claim that the landlord has curtailed and restricted his use of the property, this is not a valid or legal reason to withhold rent.

A tenant may, if a landlord fundamentally changes the rental unit, including restricting or limiting the area of the rental unit or common areas, make an application for compensation or for an order reducing the rent. However, even if the landlord had restricted the tenant's access to three or more acres of the land, this does give rise to a legal right under the Act to cease paying rent.

Section 46(1) of the Act permits a landlord to end a tenancy if rent is unpaid on any day after the day it is due, by issuing a *10 Day Notice to End Tenancy for Unpaid Rent*. A notice to end tenancy given under this section must comply with section 52 (form and content) of the Act.

In this case, monthly rent is \$1,690.00 and it is due on the first day of the month. The landlord's evidence is that the tenant has not paid rent since June 2022. On a balance of probabilities, it is my finding that the Notice was issued on a valid ground pursuant to section 46(1) of the Act. The tenant, while claiming to have paid rent for June and partial rent for July, has not provided any documentary evidence to prove this assertion.

Further, if there is a separate dispute involving the barn, that is outside the jurisdiction of the Act. It is not, I find, a factor in determining whether the Notice was properly issued. Any dispute between the parties involving the barn falls within the jurisdiction of the courts or the Civil Resolution Tribunal.

Section 52 of the Act states that

- 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.

Having reviewed the Notice I find that it complies with section 52 of the Act.

Taking into consideration all of the oral and documentary evidence before me, it is my finding that the Notice be upheld and that the tenant's application to cancel the Notice be dismissed without leave to reapply.

Section 55(1) of the Act states that

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.

Having found that the Notice complies with section 52 of the Act, having dismissed the tenant's application to cancel the Notice, and having upheld the Notice, the landlord is granted an order of possession of the rental unit.

A copy of the order of possession is issued with this Decision to the landlord. The landlord must serve a copy of the order of possession on the tenant, and the order of possession is enforceable in the Supreme Court of British Columbia.

Section 55(1.1) of the Act states that

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.

As the tenant's application is in relation to the Notice issued under section 46 of the Act, and as the circumstances referred to in subsection (1) (a) and (b) of this section apply, I hereby grant an order requiring the payment of the unpaid rent the amount of \$10,140.00.

Pursuant to section 38(4)(b) of the Act the landlord is authorized to retain the \$825.00 security deposit in partial satisfaction of the above-noted order requiring payment.

The balance of the amount ordered, \$9,315.00, is issued in a monetary order.

A monetary order is issued with this Decision to the landlord and the landlord must serve a copy of the monetary order upon the tenant. The monetary order is enforceable in the Provincial Court of British Columbia (Small Claims Court).

### Conclusion

**The application is hereby dismissed.**

**The landlord is granted an order of possession and a monetary order.**

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: November 26, 2022

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Residential Tenancy Branch