



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding THE CORPORATION OF THE DISTRICT OF  
SUMMERLAND and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR

### Introduction

On July 12, 2022, the Landlord made an Application for a Dispute Resolution Proceeding seeking an Order of Possession for Unpaid Rent based on a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) pursuant to Section 46 of the *Residential Tenancy Act* (the “Act”).

On July 25, 2022, this Application was scheduled to commence via teleconference at 9:30 AM on December 6, 2022.

Rule 7.1 of the Rules of Procedure stipulates that the hearing must commence at the scheduled time unless otherwise decided by the Arbitrator. The Arbitrator may conduct the hearing in the absence of a party and may make a Decision or dismiss the Application, with or without leave to re-apply.

K.K. and A.M. attended the hearing as agents for the Landlord; however, the Tenant did not attend at any point during the 16-minute teleconference. At the outset of the hearing, I advised the parties that recording of the hearing was prohibited, and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

K.K. advised that the Notice of Hearing and evidence package was served to the Tenant by registered mail on July 27, 2022, and she stated that the Tenant signed for this package on August 3, 2022 (the registered mail tracking number is noted on the first page of this Decision). Based on this undisputed evidence, I am satisfied that the Tenant was duly served the Landlord’s Notice of Hearing and evidence package. As such, I am satisfied that the Tenant was served all of the Landlord’s evidence in accordance with the timeframe requirements of Rule 3.14 of the Rules of Procedure.

Consequently, I have accepted all of the Landlord's evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession?

#### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

K.K. advised that the tenancy started on August 15, 2014, that rent was currently established at an amount of \$1,500.00 per month, and that it was due on the first day of each month. A security deposit of \$750.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence for consideration.

She testified that the Notice was served to the Tenant by being posted to the Tenant's door on June 7, 2022, and pictures were submitted to corroborate service. The Notice indicated that \$15,000.00 was owing for rent on June 1, 2022. The effective end date of the tenancy was noted as June 21, 2022, on the Notice.

She advised that the Tenant had not paid rent from October 2021 onwards, which only amounted to nine months of unpaid rent. Neither her nor A.M. could explain how 10 months' of rent was owing on the Notice, other than it may have been a clerical error. Regardless, both of them provided solemnly affirmed testimony that no rent has been paid by the Tenant since September 2021. K.K. referenced documentary evidence to support the Landlord's position with respect to the non-payment of rent.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 26 of the *Act* states that rent must be paid by the Tenant when due according to the tenancy agreement, whether or not the Landlord complies with the tenancy agreement or the *Act*, unless the Tenant has a right to deduct all or a portion of the rent.

Should the Tenant not pay the rent when it is due, Section 46 of the *Act* allows the Landlord to serve a 10 Day Notice to End Tenancy for Unpaid Rent. Once this Notice is received, the Tenant would have five days to pay the rent in full or to dispute the Notice. If the Tenant does not do either, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenant must vacate the rental unit.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the Notice, state the grounds for ending the tenancy, and be in the approved form.

The undisputed evidence before me is that the Tenant was deemed to have received the Notice on June 10, 2022. According to Section 46(4) of the *Act*, the Tenant then had 5 days to pay the overdue rent or to dispute this Notice. 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 is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date."*

As the Notice was deemed received on June 10, 2022, the Tenant must have paid the rent in full or disputed the Notice by Wednesday June 15, 2022, at the latest. While the amount of rent on the Notice appears to be incorrect, the undisputed evidence is that the Tenant did not pay the rent in full or dispute the Notice by June 15, 2022. As the Tenant has not paid any rent since service of the Notice, I am satisfied that some rent amount is in arrears and that the Tenant was aware of this. As the Tenant did not make any attempts to pay any amount of rent that she believed was owed, and as it does not

appear that the Tenant had a valid reason under the *Act* for withholding the rent, I am satisfied that the Tenant breached the *Act* and jeopardized the tenancy.

As the Landlord's Notice for unpaid rent is valid, as I am satisfied that the Notice was served in accordance with Section 88 of the *Act*, and as the Tenant has not complied with the *Act*, I uphold the Notice and find that the Landlord is entitled to an Order of Possession for unpaid rent pursuant to Sections 46 and 55 of the *Act*. As such, I find that the Landlord is entitled to an Order of Possession that takes effect **two days** after service of this Order on the Tenant.

### Conclusion

Based on the above, I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant. Should the Tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: December 6, 2022

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Residential Tenancy Branch