



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

File #310078254: CNR

File #310081593: CNC

### Introduction

The Tenant filed two applications seeking the following relief under the *Residential Tenancy Act* (the “Act”):

- an order pursuant to s. 46 to cancel a 10-Day Notice to End Tenancy signed on July 6, 2022 (the “10-Day Notice”); and
- an order pursuant to s. 47 to cancel a One-Month Notice to End Tenancy signed on August 3, 2022 (the “One-Month Notice”).

A.M. appeared as the Tenant. M.S. appeared as the Landlord and was joined by his daughter, G.D., who spoke on his behalf.

The parties 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. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Tenant advised having served the Notices of Dispute Resolution on the Landlord. The Landlord’s daughter acknowledged receipt of the Notice of Dispute Resolution with respect to the Tenant’s first application to dispute the 10-Day Notice but denied receipt of the second application disputing the One-Month Notice. Based on its acknowledged receipt, I find that pursuant to s. 71(2) of the *Act* the Landlord was sufficiently served with the Tenant’s first application.

The Landlord's daughter acknowledged that the Landlord was prepared to proceed on the Tenant's second application despite not having been served. If there is any prejudice in proceeding with an application that was not served, it would be borne by the respondent, which in this case is the Landlord. As the Landlord has indicated they are prepared to proceed, I accept that there is no procedural unfairness as the Landlord has consented to doing so. Accordingly, the Tenant's second application shall be heard and considered.

The Landlord's daughter advised that the Landlord's response evidence was served on the Tenant, which the Tenant acknowledges receiving without objection. Based on its acknowledged receipt, I find that pursuant to s. 71(2) of the *Act* that the Tenant was sufficiently served with the Landlord's response evidence.

#### Issues to be Decided

- 1) Should the 10-Day Notice be cancelled?
- 2) Should the One-Month Notice be cancelled?
- 3) If not, is the Landlord entitled to an order of possession?
- 4) Is the Landlord entitled to 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 parties confirmed the following details with respect to the tenancy:

- The Tenant moved into the rental unit on July 1, 2021.
- Rent of \$2,500.00 is due on the first day of each month.
- A security deposit of \$1,250.00 was paid by the Tenant.

The Landlord provides a copy of the tenancy agreement. The landlord listed in the tenancy agreement is not the same individual named in the Tenant's applications. I am advised by the parties that the Landlord purchased the property recently, with the Landlord's daughter testifying that the Landlord took possession of the residential property on March 30, 2022.

The Landlord's daughter advised that the 10-Day Notice was posted to the Tenant's door on July 6, 2022. The Tenant acknowledges receipt of the 10-Day Notice on the same date.

I have been provided with a copy of the 10-Day Notice, which lists that the Tenant failed to pay rent of \$1,845.00, comprising of arrears of \$345.00 for June 2022 and \$1,500.00 for July 2022. The Landlord's daughter testified that the Tenant failed to pay the arrears in the 10-Day Notice and failed to pay rent at all from when the 10-Day Notice was served to date.

The Tenant confirmed that she owed \$345.00 to the Landlord for June 2022 and that she paid \$1,000.00 in July 2022 such that she still owed \$1,500.00. The Tenant also admitted that she did not pay rent as alleged by the Landlord. The Tenant testified to facing financial difficulties after taking in her grandchild and having to take a leave from work.

I am also provided with a copy of the One-Month Notice, which the Landlord's daughter advises was posted to the Tenant's door on August 3, 2022. The Tenant acknowledges receipt of the One-Month Notice, though could not recall the date it was received.

The One-Month Notice was issued on the basis of repeated late rent payments, alleging that rent had not been paid on time in May 2022, June 2022, July 2022, and August 2022. The Landlord's daughter testified that the Tenant paid rent late for May 2022 on the 11<sup>th</sup> of May. The Tenant did not dispute this at the hearing.

The Tenant continues to reside within the rental unit.

### Analysis

The Tenant seeks an order cancelling the 10-Day Notice and the One-Month 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 find that the 10-Day Notice was served on July 6, 2022 in accordance with s. 88 of the *Act* after it was posted to the Tenant's door. I accept that it was received by the Tenant on the same date as acknowledged by her at the hearing.

Upon review of the information on file and in consideration of Rule 2.6 of the Rules of Procedure, I find that the Tenant filed her application disputing the 10-Day Notice on July 10, 2022. Accordingly, I find that she filed her dispute within the 5-days permitted to her under 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, sets out the grounds for ending the tenancy, and is in the approved form (RTB-30). The effective date listed in the 10-Day Notice is incorrect, though by application of s. 53 of the *Act*, this is corrected automatically to July 16, 2022, which is 10 days after the notice to end tenancy was received by the Tenant. I do not find the error in the effective date to be material under the circumstances as it was automatically corrected by s. 53 of the *Act*.

There is little dispute here that the Tenant failed to pay rent in full as per the tenancy agreement in June 2022 and in July 2022. The Tenant admits that the allegations of unpaid rent made by the Landlord are accurate. She confirmed the arrears listed in the 10-Day Notice are accurate and confirms that no rent has been paid since the 10-Day Notice was served. In other words, the Tenant did not pay the overdue rent within 5 days of receiving the 10-Day Notice such that it was not cancelled by application of s. 46(4) of the *Act*.

I find that the 10-Day Notice was properly issued and is enforceable. The Tenant's application to cancel the 10-Day Notice is dismissed without leave to reapply.

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 is the case here, I find that the Landlord is entitled to an order of possession.

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*.

Pursuant to s. 68(2) of the *Act*, I find that the tenancy ends on today's date. I accept the undisputed evidence from the parties that rent is owed in the amount as listed in the 10-Day Notice, being \$1,845.00, and for the period from August to December 2022, totalling \$14,345.00 (\$1,845.00 + (\$2,500.00 x 5 months)). Pursuant to s. 55(1.1) of the *Act*, I order the Tenant pay this amount to the Landlord.

Policy Guideline #54 provides guidance with respect to determining the effective date of an order of possession and states the following:

An application for dispute resolution relating to a notice to end tenancy may be heard after the effective date set out on the notice to end tenancy. Effective dates for orders of possession in these circumstances have generally been set for two days after the order is received. However, an arbitrator may consider extending the effective date of an order of possession beyond the usual two days provided.

While there are many factors an arbitrator may consider when determining the effective date of an order of possession some examples are:

- The point up to which the rent has been paid.
- The length of the tenancy.
  - e.g., If a tenant has lived in the unit for a number of years, they may need more than two days to vacate the unit.
- If the tenant provides evidence that it would be unreasonable to vacate the property in two days.
  - e.g., If the tenant provides evidence of a disability or a chronic health condition.

An arbitrator may also canvas the parties at the hearing to determine whether the landlord and tenant can agree on an effective date for the order of possession. If there is a date both parties can agree to, then the arbitrator may issue an order of possession using the mutually agreed upon effective date.

Ultimately, the arbitrator has the discretion to set the effective date of the order of possession and may do so based on what they have determined is appropriate given the totality of the evidence and submissions of the parties.

As the Tenant failed to pay rent on December 1, 2022 and as I have ordered that she do so, I find that it is appropriate to take some flexibility in setting the effective date of the order of possession. Given the challenges of finding accommodations on short notice, the holiday season, and given that the Tenant is taking care of a minor, I find that the effective date of the order of possession shall be December 31, 2022.

As the 10-Day Notice has been found to be enforceable, I find that determining whether the One-Month Notice ought to be cancelled is moot. The tenancy is over. Accordingly, I make no findings with respect to the Tenant's second application and dismiss it without leave to reapply.

### Conclusion

The Tenant's 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*. I order that the Tenant provide vacant possession of the rental unit to the Landlord by no later than **1:00 PM on December 31, 2022**.

The Landlord is entitled to an order for unpaid rent pursuant to s. 55(1.1) of the *Act*. I order that the Tenant pay **\$14,345.00** to the Landlord as unpaid rent.

As the tenancy is over, I find that the question of whether the One-Month Notice is enforceable is moot. The Tenant's second application to cancel the One-Month Notice is dismissed without leave to reapply.

It is the Landlord's obligation to serve the order of possession and monetary order on the Tenant.

If the Tenant does 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 Tenant does not comply with the monetary order, it may be filed 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: December 02, 2022

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Residential Tenancy Branch