



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNR

### Introduction

The Tenants seek an order pursuant to s. 46 of the *Residential Tenancy Act* (the “Act”) cancelling a 10-Day Notice to End Tenancy signed January 5, 2023 (the “10-Day Notice”).

C.K. and D.R. appeared as the Tenants. K.L. and L.N. appeared as the Landlord’s agents.

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 parties advise that they served their application materials on the other side. Both parties acknowledge receipt of the other’s application materials without objection. Based on the mutual acknowledgments of the parties without objection, I find that pursuant to s. 71(2) of the *Act* that the parties were sufficiently served with the other’s application materials.

### Issues to be Decided

- 1) Is the 10-Day Notice enforceable?
- 2) If so, is the Landlord entitled to an order of possession and an order for unpaid rent?

### Preliminary Issue – Style of Cause

Policy Guideline #43 provides guidance with respect to the naming of parties and indicates that the correct spelling of legal names ought to be used. In this instance, the tenancy agreement and the Notice of Dispute Resolution list different individuals as the Landlord and the 10-Day Notice lists a property management company.

I enquired with the parties who the Landlord was. The Landlord's agent advised that she is not the Landlord and acts as an employee for the management company looking after the property on behalf of the owner O.K., who is listed in the tenancy agreement. I proposed the style of cause be amended to reflect the Landlord as listed in the tenancy agreement. The parties did not object to doing so.

Accordingly, I amend the style of cause to reflect the spelling of the Landlord's name as listed in the tenancy agreement.

### 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 Tenants moved into the rental unit on December 1, 2022.
- Rent of \$2,000.00 is due on the first of each month.
- The Tenants paid a security deposit of \$1,000.00 to the Landlord.

I am provided with a copy of the tenancy agreement by the parties.

The Landlord's agent advises that the 10-Day Notice was posted to the Tenants' door on January 5, 2023 after the Tenants had failed to pay rent on December 1, 2022 and January 1, 2023. The Tenants acknowledge receiving the 10-Day Notice on January 5, 2023.

I am provided with a copy of the 10-Day Notice by the parties. It lists arrears of \$4,000.00 due December 1, 2022 and an effective date of January 16, 2023. At the hearing, the Landlord's agent confirms that the December 1, 2022 date was incorrect and the \$4,000.00 arrears was inclusive of rent owed for December 2022 and January

2023. The Landlord's agent further advises that the Landlord has not received any rent payment since the 10-Day Notice was served or at all since the tenancy began. The only payment received, according to the Landlord's agent, was the \$1,000.00 for the security deposit. At the time of the hearing, I am told by the agent that arrears totalled \$6,000.00 as February's rent had not been paid on the 1<sup>st</sup>.

The Tenants confirm that they have not paid rent and that they have not made partial payment on rent owed. I am told by the Tenants that they had Covid-19 in December 2022 and gave their rent money to a third-party with instructions to give it to the Landlord but that the third-party stole their money instead. The Tenants further indicate that they are waiting on assistance payments but that processing has been slow. I am further told by the Tenants that they have every intention on paying their rent.

The Tenants further indicate that they entered into a payment with the Landlord to settle arrears. The Tenants advise of an email received by the Landlord on January 18, 2023 accepting the terms of a payment plans proposed. The Tenants did not provide a copy of the email. They indicate the terms of the payment plan were that they would pay \$2,082.00 to the Landlord and the balance would be paid at a later date.

The Landlord's agent initially denied the existence of the payment plan, though upon review of their correspondence they confirm that on January 17, 2023 the Tenants offered to pay \$2,935.00 to the Landlord by the end of the week with the balance to be paid on a payment plan to be discussed. The Landlord's agent confirms the January 18, 2023 email from the Landlord mentioned by the Tenants in which he accepted the payment plan. It was emphasized, however, by the agent that the Tenants have not made payment on their rent at all since the beginning of the tenancy.

The parties confirm that the Tenants continue to reside within the rental unit.

### Analysis

The Tenants apply to cancel the 10-Day 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.

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's agent, states the address for the rental unit, states the correct effective date, sets out the grounds for ending the tenancy, and is in the approved form (RTB-30).

Though the 10-Day Notice lists the management company rather than the Landlord himself, I accept that the company falls within the meaning of "landlord" as stated in s. 1 of the *Act*. I further accept that the date of December 1, 2022 was incorrectly used, though this in no way invalidates the notice, which clearly stated cause for ending the tenancy due to the non-payment of rent, which totalled \$4,000.00 when it was issued.

In this instance, I find that the Landlord served the 10-Day Notice in accordance with s. 88 of the *Act* by posting to the door on January 5, 2023. I further find that the Tenants received the 10-Day Notice on January 5, 2023 as confirmed by them at the hearing.

Upon review of the information on file, the Tenants filed their application on January 9, 2023 but submitted the information for their fee waiver application on January 11, 2023. Rule 2.6 of the Rules of Procedure, which defines when an application is considered to have been made, states the following:

The Application for Dispute Resolution has been made when it has been submitted and either the fee has been paid or when all documents for a fee waiver have been submitted to the Residential Tenancy Branch directly or through a Service BC Office. The three-day period for completing payment under Rule 2.4 is not an extension of any statutory timelines for making an application.

In this instance and pursuant to Rule 2.6 of the Rules of Procedure, I find that the Tenants filed their application on January 11, 2023 as this is when they submitted the documents required for their fee waiver application.

As stated above, s. 46(4) of the *Act* sets a 5-day time limit for filing an application disputing a notice to end tenancy for unpaid rent. In this instance, the Tenant's acknowledge receiving the 10-Day Notice on January 5, 2023, which would mean the

last day for filing to dispute the notice was January 10, 2023. As the Tenants filed on the 11<sup>th</sup>, I find that they have failed to file their application within the 5 days granted to them under s. 46(4) of the *Act*. Given this, I find that s. 46(5) of the *Act* is triggered such that the Tenants are conclusively presumed to have accepted the end of the tenancy and ought to have vacated the rental unit by the effective date of the notice.

To be clear, even had the Tenants filed on time, I would have still dismissed the Tenants' application. The Tenants admit to not having paid rent at all during this tenancy. Pursuant to s. 26(1) of the *Act*, a tenant must pay rent when it is due whether or not the landlord complies with the *Act*, the Regulations, or the tenancy agreement unless the *Act* grants the tenant the right to deduct all or a portion of the rent. It is no excuse to say that someone stole my rent money or that I am waiting for social assistance. The Tenants have an obligation to pay rent to the Landlord and have admitted to not doing so.

I have also considered the purported payment plan and whether estoppel may apply under the circumstances. Either of the narratives provided on the plan involved the Tenants making payment either in the amount of \$2082.00 or \$2,935.00. I accept that this was to be done by the end of the week of January 17, 2023. I further accept that no payment was made such that any settlement would not apply as the Tenants failed to live up to their end of it. Estoppel does not apply.

As the Tenants are conclusively presumed to have accepted the 10-Day Notice, I dismiss their application to cancel the notice.

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 is conclusively presumed to have accepted the end of the tenancy pursuant to s. 46(5) of the *Act*, the tenancy ends on the effective date in the notice to

end tenancy. In this case, that is January 16, 2023. Only rent owed up until this point constitutes unpaid rent under s. 55(1.1) of the *Act* and I cannot order compensation in lieu of rent from when a tenant overholds the rental unit. Any claim for compensation during the overholding period would need to be relief sought independently by the Landlord on their own application.

I accept that the Tenants are in arrears of rent of \$4,000.00 (\$2,000.00 + \$2,000.00) for the months of December 2022 and January 2023. I grant the Landlord an order for this amount. Pursuant to s. 72(2), I direct that the Landlord retain the security deposit in partial satisfaction of the unpaid rent.

### Conclusion

The Tenants 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*. The Tenants shall give vacant possession of the rental unit to the Landlord within **two (2) days** of receiving the order.

The Landlord is entitled to an order for unpaid rent pursuant to s. 55(1.1) of the *Act*. This amount totals \$4,000.00, which excludes compensation in lieu of rent after the effective date of the 10-Day Notice given the application of the conclusive presumption. Pursuant to s. 72(2) of the *Act*, I direct that the Landlord retain the security deposit of \$1,000.00 in partial satisfaction of the unpaid rent. In total, I order that the Tenants pay the Landlord **\$3,000.00** for unpaid rent pursuant to s. 55(1.1).

It is the Landlord's obligation to serve these orders on the Tenants. If the Tenants do not comply with the monetary order, it may be filed by the Landlord with the Small Claims Division of the Provincial Court and enforced as an order of that Court. If the Tenants do 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.

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: February 13, 2023

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Residential Tenancy Branch