



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR

### Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Tenant on September 13, 2022, under the *Residential Tenancy Act* (the Act), seeking:

- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (10 Day Notice).

The hearing was convened by telephone conference call at 11:00 A.M. (Pacific Time) on January 31, 2023, and was attended by the Tenant's agent K.A.B. (Agent) and the Landlord. All testimony provided was affirmed. As the Landlord acknowledged service of the Notice of Dispute Resolution Proceeding (NODRP), and stated that there are no concerns regarding the service date or method, the hearing proceeded as scheduled. The parties were provided the opportunity to present their evidence orally and in written and documentary form, to call witnesses, and to make submissions at the hearing.

The parties were advised that pursuant to rule 6.10 of the Residential Tenancy Branch Rules of Procedure (the Rules of Procedure), interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The parties were asked to refrain from speaking over me and one another and to hold their questions and responses until it was their opportunity to speak. The parties were also advised that pursuant to rule 6.11 of the Rules of Procedure, recordings of the proceedings are prohibited, except as allowable under rule 6.12, and confirmed that they were not recording the proceedings.

Although I have reviewed all evidence and testimony before me that was accepted for consideration as set out above, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be emailed to them at the email addresses confirmed in the hearing.

### Preliminary Matters

The Agent stated that they were advised by the Tenant that they had received no documentation from the Landlord in relation to this hearing, other than notice that a bailiff would be coming to remove them. However, the Agent stated that this documentation was not provided to them by the Tenant and therefore they cannot comment on whether the Tenant was confused about the nature of the documentation received.

The Landlord stated that a bailiff has not been hired and that no documentation was served on the Tenant regarding a bailiff. The Landlord stated that the documentation being referred to by the Agent was actually the documentary evidence before me from the Landlord, which was personally served on the Tenant on January 20, 2023. The Agent reiterated that as they were not provided with the documentation referred to by the Tenant, they cannot comment further on its nature and stated that they are not disputing the Landlord's testimony as the Tenant may have been confused about what was served.

I accept the affirmed testimony of the Landlord that the documentary evidence before me from them was personally served on the Tenant, who neither appeared at the hearing nor provided their Agent with copies of the documents received by them from the Landlord, on January 20, 2023. As January 20, 2023, is more than seven days prior to the date of the hearing, and personal service is acceptable under section 89 of the Act, I therefore find that the documentary evidence before me was properly served on the Tenant on January 20, 2023, in accordance with the Act and rule 3.15 of the Rules of Procedure and I therefore accept it for consideration.

### Issue(s) to be Decided

Is the Tenant entitled to cancellation of the 10 Day Notice?

If not, Is the Landlord entitled to an Order of Possession under section 55(1) of the Act and to recover unpaid rent under section 55(1.1) of the Act?

### Background and Evidence

The tenancy agreement in the documentary evidence before me states that the tenancy commenced on February 1, 2019, that rent in the amount of \$700.00 is due on the first day of each month, and that a \$325.00 security deposit is required. At the hearing the Agent stated that the security deposit was paid and is still held in trust.

In the Application the Tenant stated that the 10 Day Notice was personally received on September 9, 2022, and neither the Agent nor the Landlord provided testimony or evidence to the contrary. The 10 Day Notice in the documentary evidence before me is on a Branch form, is signed and dated September 9, 2022, has an effective date of September 20, 2022, and states that \$4,900.00 in outstanding rent was owed as of September 1, 2022, for the period between January 1, 2022 – September 1, 2022.

The Agent stated that the Tenant, who was unable to attend the hearing as they are currently under the care of a health team, advised them that they vacated the rental unit yesterday with their most important possessions. However, the Agent stated that the Tenant still has approximately 16 boxes in the rental unit which could not be taken with them, such as kitchen items and personal possessions. Although the Landlord stated that the Tenant recently advised them of their intention to move out, they do not reside in the community where the rental unit is located and therefore were unable to verify whether the Tenant vacated prior to the hearing.

The Landlord stated that the Tenant currently owes \$7,700.00 in outstanding rent up to and including January 31, 2023, and has paid no rent since the issuance of the 10 Day Notice. A letter from an accounting agency to the Tenant in the documentary evidence before me states that the Tenant has failed to pay rent for all but two months in 2022, March and April, and that as a result, the Tenant owes \$7,000.00 in outstanding rent for 2022 (\$700.00 x 10 months). At the hearing the Landlord stated that as the Tenant has also paid no rent for January of 2023, the Tenant now owes \$7,700.00. The Agent did not dispute the amount owed.

### Analysis

Based on the documentary evidence and testimony before me, I am satisfied that a tenancy to which the Act applies exists between the parties, that rent in the amount of \$700.00 is due under the tenancy agreement on the first day of each month, and that a \$325.00 security deposit was paid by the Tenant which is held in trust by the Landlord.

As there is no evidence or testimony to the contrary, I accept that the 10 Day Notice was personally served on the Tenant on September 9, 2022, and therefore find that the Application was filed on time. I also find that the Tenant owed the amount of rent shown on the 10 Day Notice at the time of its issuance, that the Tenant has not paid any rent since April of 2022, and that the Tenant currently owes \$7,700.00 in outstanding rent for January and February of 2022, May – December of 2022, and January of 2023. As a result, and because the Agent stated that the Tenant has already vacated the rental unit and removed all but 16 boxes of their possessions, I therefore dismiss the Tenant's Application seeking cancellation of the 10 Day Notice without leave to re-apply, and order that the tenancy is ended as of January 31, 2023.

As the 10 Day Notice in the documentary evidence before me complies with section 52 of the Act, I therefore grant the Landlord an Order of Possession for the rental unit effective two days after service, pursuant to section 55(1) of the Act. The Order of Possession must be served and enforced by the Landlord in the event that the Tenant has not in fact vacated the property as stated by the Agent. The Landlord is cautioned that they must enforce the Order of Possession if necessary to re-gain possession of the rental unit and that they must follow the abandonment provisions set out under Part 5 of the regulations with respect to the duty of care required in relation to any of the Tenant's remaining possessions.

Pursuant to section 55(1.1) of the Act, I also grant the Landlord recovery of the \$7,700.00 in outstanding rent. Pursuant to section 72(2)(b) of the Act and in accordance with the Landlord's request at the hearing, I authorize the Landlord to retain the Tenant's security deposit, plus \$0.56 in interest calculated in accordance with the regulation, in partial recovery of this amount. Pursuant to section 67 of the Act, I therefore grant the Landlord a Monetary Order in the amount of \$7,374.44 (\$7,700.00 less the \$325.00 security deposit and \$0.56 in security deposit interest), and I order the Tenant to pay this amount to the Landlord.

## Conclusion

Pursuant to section 55(1) of the Act, I grant an Order of Possession to the Landlord effective at **two days after service of this Order** on the Tenant. The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

Pursuant to section 67 of the Act, I grant the Landlord a Monetary Order in the amount of **\$7,374.44**. The Landlord is provided with this Order in the above terms and the Tenant must be served with this Order as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

Pursuant to section 72(2)(b) of the Act, the Landlord is entitled to retain the security deposit, plus interest calculated in accordance with the regulations.

The Tenant should also be aware that the dispute resolution process is not intended to serve as a way to delay enforcement of a notice to end tenancy where there are no reasonable grounds upon which the notice could have been cancelled. No documentary evidence was submitted by the Tenant for my review and consideration in support of the Application, no arguments were presented by the Agent that rent was not owed as set out in the 10 Day Notice or that the amount owing was paid within the required timeline, that the 10 Day Notice was not properly served or does not comply with section 52 of the Act, or that the Tenant had a right to withhold rent under the Act. Further to this, the description given by the Tenant in the paper Application for why they have disputed the 10 Day Notice also does not include any reason that would be grounds under the Act for cancelling the 10 Day Notice. As a result, I find it more likely than not that the Tenant filed the Application simply as a means to delay eviction. I also find that the Application was therefore baseless, without merit, and an abuse of the dispute resolution process.

This decision is made on authority delegated to me by the Director of the Branch under Section 9.1(1) of the Act.

Dated: February 1, 2023

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Residential Tenancy Branch