



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** MT, CNR, OPR, RP, LRE, RR, FF

### **Introduction**

This hearing dealt with applications by the tenant and the landlord pursuant to the *Residential Tenancy Act*. The landlord had served a notice to end tenancy for non payment of rent and the tenant applied for an order to set aside this notice and for more time to do so. The landlord applied for an order of possession pursuant to this notice.

The tenant also applied for various other remedies that are unrelated to the notice to end tenancy for non payment of rent. The tenant applied for an order directing the landlord to carry out repairs, for a rent reduction and to suspend the landlord's right to enter the rental unit.

Both parties attended the hearing and had opportunity to be heard. Both parties acknowledged receipt of the other party's evidence

RTB Rules of Procedure 2.3 states that if in the course of a dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may dismiss unrelated disputes contained in a single application with or without leave to reapply. In this regard I find the tenant has applied for an order for the landlord to make repairs, reduce rent and to suspend the landlord's right to enter the rental unit. As these sections of the tenant's application are unrelated to the main section, which is to cancel the ten-day notice, I dismiss these sections of the tenant's claim, with leave to reapply.

Accordingly, this hearing only dealt with the tenant's application to set aside the ten-day notice to end tenancy for nonpayment of rent.

### **Issue to be Decided**

Does the landlord have grounds to end this tenancy? Is the tenant entitled to more time to dispute the notice to end tenancy?

### **Background and Evidence**

The tenancy began on September 01, 2019. The monthly rent is \$1,395.00 payable on the first of each month. The tenant failed to pay rent on October 01, 2022. On October 07, 2022, the landlord served the tenant in person, with a ten-day notice to end tenancy for non payment of rent. The notice was in the approved format. The tenant made application October 14, 2022.

The tenant testified that there was a problem with the plumbing and the landlord visited the rental unit, on September 22, 2022 to address the issue. The landlord stated that the home is 50 years old and upon opening up the wall found additional issues. The landlord had informed the tenant that it would take approximately a week to fix the problem. Ten days later, on October 02, 2022, the tenant refused to allow the landlord in to complete the work. The tenant stated that the landlord was not a professional plumber and she would not allow the job to be completed by him.

The landlord stated that he tried to resolve the issue by communicating with the tenant, but the tenant was adamant that the landlord would not be allowed access to complete the work and to this date, February 03, 2023, the work is unfinished, and the shower is unusable. The tenant stated that she has rented a place to shower and has been using this place since October 2022.

The tenant agreed that she did not pay rent on October 01, 2022, and received the notice to end tenancy in person on October 07, 2022. The landlord stated that he sent the tenant a reminder when the five day timeline to pay rent would expire but the tenant ignored it. The tenant made application to dispute the notice to end tenancy on October 14, 2022. The tenant stated that she did not make application in a timely manner because she did not know or understand that she had to.

The male tenant testified that despite repeated pleas to the female tenant to pay rent, she refused to. Finally on November 02, 2022, the tenant agreed to and paid rent that was due for October 2022. The landlord agreed that at the time of the hearing all outstanding rent had been paid.

### **Analysis**

Based on the sworn testimony of both parties, I find that the tenant received the notice to end tenancy in person, on October 07, 2022. The tenant did not apply to dispute the notice until October 14, 2022.

Section 46(4) of the *Act* provides that tenants have 5 days in which to dispute a ten - day notice to end tenancy for non payment of rent, failing which they are conclusively presumed to have accepted the end of the tenancy.

The tenant has applied for more time to apply to dispute the notice. I am unable to grant the tenant more time to make her application without proof that exceptional circumstances prevented her from complying with the statutorily prescribed timeframe.

Section 66(1) of the *Act* provides that the director may extend a time limit established by this *Act* only in exceptional circumstances, other than as provided by section 59(3).

The tenant testified that she was unaware that she had 5 days to dispute the notice or pay rent.

Based on the testimony of the tenant, I do not find exceptional circumstances prevented the tenant from applying to dispute the notice to end tenancy, in a timely manner and accordingly I dismiss the request for an extension of time to apply to dispute the notice. The notice is upheld, and the tenancy will end in accordance with the notice. The tenant's claim to set aside the Notice is dismissed.

I find that the landlord is entitled to an order of possession. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

### **Conclusion**

The notice to end tenancy is upheld and I grant the landlord an order of possession effective February 28, 2023.

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 03, 2023

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Residential Tenancy Branch