



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

A matter regarding 1655 HARO C/O TRIBE MANAGEMENT  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      CNR, OLC, FFT

### **Introduction**

The tenant seeks an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") pursuant to section 46(4)(b) of the *Residential Tenancy Act* (the "Act"). They are also seeking to recover the cost of the filing fee under section 72 of the Act and for the landlord to comply with the Act, regulation or the tenancy agreement under section 62 of the Act.

Parties appeared for both the landlord and the tenant. The parties affirmed to tell the truth during the hearing. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

The tenant confirmed they served the Notice of Dispute Resolution Package (the "materials") on the landlord on January 21, 2023 via registered mail. The landlord confirmed receipt of the materials on January 24, 2023. Therefore I find that pursuant to section 89 of the Act that tenant's application materials were sufficiently served to the landlord.

The landlord testified they served their evidence to the tenant by attaching it to the door of the rental unit at 11:30 AM on February 6, 2023 and that a further copy was posted to the tenant's mailbox the following day. The tenant stated they received neither of the copies of the landlord's evidence. I find that on the balance of probabilities the landlord's evidence was served in accordance with the Act and *Rules of Procedure* and I admitted it to proceedings.

### Preliminary Issue – Severing Issues

The tenant applied for multiple remedies under the Act, some of which were not sufficiently related to one another.

Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After reviewing the issues raised by the tenant, I determined that the most pressing and urgent issue is the tenant's request to cancel the Notice and I exercised my discretion to dismiss with leave to re-apply the tenant's request for the landlord to comply with the Act, regulation or the tenancy agreement and provide services or facilities required by the tenancy agreement or law.

### Issues to be Decided

- 1) Should the Notice be cancelled?
- 2) If not, is the landlord entitled to an order of possession?
- 3) 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.

Though no written tenancy agreement was submitted as evidence by either side, the parties agreed that a tenancy agreement has been in place since November 15, 2013 with current rent of \$1,203.00 due on the first day of the month. The landlord retains the security deposit of \$500.00. There was no pet damage deposit taken.

The landlord testified that current ownership took over the rental unit in February 2021 and that they have in place a number of rent payment options available to tenants; cheque, money order, online transfer or Pre-Authorized Debits (PAD) agreement. The tenant participates in the PAD program.

A Notice of Rent Increase was served on, or around, September 20 2022 which provided for a rent increase from \$1,180.00 to \$1,203.00 per month, effective January 1, 2023. Updated authorization forms were sent with the Notice of Rent Increase to enable the tenant to amend the rent payment amount. The landlord testifies that no completed authorization form was received from the tenant and that on January 1, 2023, when they attempted to take the rent payment of \$1,203.00 from the tenant's bank account they received an insufficient funds notice.

A Returned Cheque Notice advising of the payment return was sent to the tenant on January 6, 2023 and the Notice was served on January 10, 2023. The landlord affirms that the tenant made no attempt to pay the rent due and that no payment was made for February 2023 either. The reason for the February payment not going through provided by the landlord's accounting professional was again due to insufficient funds.

The landlord testified fees of \$25.00 were incurred with both returned payments which the landlord requested the tenant cover, though there was no clear evidence put forward that the tenancy agreement permits this fee.

In their testimony the tenant did not dispute they received the rent increase in September 2022 and stated they did not get the Returned Cheque Notice dated January 6, 2023. They did however, affirm they received the Notice, and that rent payments for January and February 2023 did not go through and that the funds were still in their bank.

### Analysis

Section 26 of the Act requires tenants to pay rent on time unless they have a legal right to withhold some, or all, of the rent. It is clear from this section of the Act that it is for the tenant to ensure that rent is paid and is not incumbent on the landlord to collect rent.

The Act sets out limited circumstances in which monies claimed by the tenant can be deducted from rent, which include when a tenant has paid a security or pet deposit above the allowed amount, reimbursement of costs incurred by the tenant for emergency repairs, when a landlord collects rent for a rent increase that does not comply with the Regulation, if the landlord gives authorization to not pay rent, or as ordered by the Director.

The tenant put forward no evidence to indicate that any of the above circumstances are

applicable, nor are any apparent to me. Therefore I am satisfied that rent in the amounts of \$1,203.00 was due on January 1, 2023 and again on February 1, 2023. Though the tenant put forward testimony to indicate the funds were there to be taken and that they did not receive the Returned Cheque Notice, they clearly indicated they received the Notice so will have been aware the rent payment did not reach the landlord and took no action to remedy this.

Section 46(1) of the Act allows landlords to end a tenancy if the tenant does not pay rent on time by issuing a 10 Day Notice to End Tenancy for Unpaid Rent.

Both the landlord's evidence and the tenant's own testimony show that the tenant did not pay the rent on January 1, 2023 and on February 1, 2023. Therefore, I find on a balance of probabilities that the Notice was given for a valid reason, namely, the non-payment of rent. I also find that the Notice complies with the form and content requirements of section 52. As a result, the tenant's application to cancel the Notice is dismissed without leave to reapply.

Based on the above findings, the landlord is granted an order of possession under section 55(1) of the Act. A copy of the order of possession is attached to this Decision and must be served on the tenant. The tenant has two days to vacate the rental unit from the date of service or deemed service. I find that the tenancy ended on February 16, 2023.

Since the application relates to a section 46 notice to end tenancy, the landlord is entitled to an order for unpaid rent under section 55(1.1) of the Act. Therefore, the tenant is ordered to pay \$2,406.00 in unpaid rent to the landlord. Section 7(2) of the *Residential Tenancy Regulation* provides that a landlord must not charge the tenant for return fees unless the tenancy agreement provides for that fee. As the landlord was not able to provide evidence confirming the presence of such a term in the tenancy agreement, I am not granting the landlord's request for the two \$25.00 fees to be added to the unpaid rent. The landlord is at liberty to make a separate application for these fees.

Under section 38(4)(b) of the Act, the landlord is ordered to retain the security deposit in partial satisfaction of the payment order. A monetary order for the remaining amount is attached to this Decision and must be served on the tenant. The monetary order is enforceable in the Provincial Court of British Columbia (Small Claims Court). The order is summarized below.

Item	Amount
Unpaid rent	\$2,406.00
Less: security deposit	(\$500.00)
<b>Total</b>	<b>\$1,906.00</b>

As the tenant's application was not successful they must bear the cost of the filing fee.

### Conclusion

The tenant's application is dismissed without leave to reapply.

The landlord is entitled to an order of possession pursuant to section 55(1) of the Act. The tenant shall give vacant possession of the rental unit to the landlord within two (2) days of receiving the order of possession.

The landlord is entitled to an order for unpaid rent pursuant to section 55(1.1) of the Act. I order that the tenant pay the landlord \$1,906.00 in unpaid rent.

It is the landlord's obligation to serve the order of possession and the monetary order on the tenant. If the tenant does 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 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.

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 17, 2023

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Residential Tenancy Branch