



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

A matter regarding VILLA MARGARETA C/O BAYSIDE PROPERTY SERVICES LTD and [tenant name suppressed to protect privacy]

Dispute Codes      CNR

## Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant filed under the Residential Tenancy Act (the “Act”), to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”), issued on January 9, 2023.

Only the landlord’s agents attended. The tenant did not attend although the line remained open while the phone system was monitored for ten minutes. Further, the tenant was sent a reminder notification from the Residential Tenancy Branch reminding them of today’s hearing.

The hearing proceeded in the absence of the tenant.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to relevant facts and issues in this decision.

## Issue to be Decided

Should the Notice be cancelled?

## Background and Evidence

The tenant submits in their application that they received the Notice on January 17, 2023, by registered mail. The tenant submits that they are disputing the Notice, “I am hoping to extend my stay at this current location.”

The landlord’s agents confirmed the tenant was served with the Notice as indicated by the tenant. The agents confirmed the tenant did not pay the outstanding rent within 5 days as it was paid on January 26, 2023. The agents stated that the tenant then failed to pay rent for February 2023, in the amount of \$1,167.00. The agent stated that the

tenant did pay rent for March 2023, and they issued a receipt for use and occupancy. The landlord seeks an order of possession and a monetary order for the unpaid rent in the amount of \$1,167.00.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Rules about payment and non-payment of rent are defined in Part 2 of the Act.

#### **Rules about payment and non-payment of rent**

*26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

...

**How to end a tenancy is defined in Part 4 of the Act.**

#### **Landlord's notice: non-payment of rent**

*46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.*

*(2) A notice under this section must comply with section 52 [form and content of notice to end tenancy].*

...

*(4) Within 5 days after receiving a notice under this section, the tenant may*

*(a) pay the overdue rent, in which case the notice has no effect, or*

*(b) dispute the notice by making an application for dispute resolution.*

Upon review of the Notice, I find the Notice is completed in accordance with the requirements of section 52 of the Act.

Under the legislation the tenant may dispute the Notice for specific reasons, such as they have proof that their rent was paid or that the tenant had the right under the Act to deduct all or a portion from their rent, such as an order from an Arbitrator.

Although the tenant filed an application for dispute resolution within the time limit permitted under the Act, I find the tenant's application had no merit as the tenant had not paid the rent and had no authority under the Act to withhold rent. I find the Notice is valid and remains in full force and effect. Therefore, I dismiss the tenant's application without leave to reapply.

As the tenant's application is dismissed, I find the landlord is entitled to an order of possession, pursuant to section 55 of the Act.

#### **Order of possession for the landlord**

**55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

(1.1) If an application referred to in subsection (1) is in relation to a landlord's notice to end a tenancy under section 46 [*landlord's notice: non-payment of rent*], and the circumstances referred to in subsection (1) (a) and (b) of this section apply, the director must grant an order requiring the payment of the unpaid rent.

I find that the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective **two days** after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

I find that the landlord is entitled to monetary order for the unpaid rent, pursuant to section 55(1.1) of the Act in the amount of \$1,167.00. This order may be filed in the Provincial Court and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

Conclusion

The tenant's application is dismissed. The landlord is granted an order of possession and a monetary order for the unpaid rent.

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: March 23, 2023

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Residential Tenancy Branch