



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

A matter regarding VMH Development & Management  
Inc. and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR

### Introduction

The Tenant filed an Application for Dispute Resolution on March 6, 2023 seeking an order to cancel the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10-Day Notice”).

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on March 30, 2023. Both parties attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions and present oral testimony during the hearing.

The Landlord confirmed they received the Notice of Dispute Resolution Proceeding, albeit directly from the Residential Tenancy Branch and not the Tenant. The Tenant stated their belief that they received evidence from the Landlord directly via email concerning this hearing.

### Issue(s) to be Decided

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

If the Tenant is not successful in their Application, is the Landlord entitled to an Order of Possession, pursuant to s. 55 of the *Act*?

### Background and Evidence

The Tenant and Landlord both provided a copy of the tenancy agreement to the Residential Tenancy Branch. This was the agreement in place since the Tenant signed it electronically on January 18, 2022, retroactively for the tenancy that started on January 5, 2022. The monthly

rent was set at \$2,300 and in early 2023 this increased to \$2,346. The rent was payable, as set in the agreement, the 1<sup>st</sup> day of each month. The Tenant and Landlord each confirmed the basic details of the agreement as correct.

Both parties provided a copy of the 10-Day Notice, served by the Landlord on March 2, 2023. This listed the failure by the Tenant to pay the rent of \$2,346 on March 1, 2023. The Tenant confirmed they received this notice by email, as set in the pre-agreed email use for service of documents in place since the start of the tenancy.

The 10-Day Notice provided for the final tenancy date of March 11, 2023.

The Landlord in the hearing presented that as of the hearing date of March 30 the Tenant had not yet paid the March 2023 rent. The Landlord stated the immediate need to have this tenancy end, and stated their concern that the Tenant would not pay the March rent and carryover the non-payment into April, with April 1<sup>st</sup> being another rent payment day, being two days after the scheduled hearing. The Landlord requested acknowledgement of the following month's rent amount in the form of a monetary order that includes that additional amount owing.

The Tenant stated their commitment to cover the balance of rent owing as of the hearing date, and not in the future be late on rent. The Tenant also presented that there is a lag when they pay the rent electronically, and this is a matter of the way the specific account they use to pay the rent is set up, This is also affected by the payment of bills from the same account, and receivables that are paid into this same account. They also presented their recent difficulty with an unauthorized person having access to the account.

The Landlord re-stated their concern for continued late rent payments going forward. The Landlord presented six other 10-Day Notices they issued since the start of the tenancy for late rent payments.

### Analysis

I note the parties had in place an explicit agreement on service of documents via email. The Landlord provided that agreement in their evidence. On this basis, I accept that the Landlord served their evidence for this hearing to the Tenant via email. Similarly, I find the Landlord stated their consent to the manner in which they found out about the hearing, initially from the Tenant via text message, and then via the Residential Tenancy Branch who passed the Notice of Dispute Resolution Proceeding directly to the Landlord at their request.

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

Following this, s. 46(4) states that within 5 days of receiving a notice a tenant may pay the overdue rent, thereby cancelling the Notice, or dispute it by filing an Application for Dispute Resolution.

I find there was a valid tenancy agreement in place between the parties. This sets out the amount owing on a monthly basis, and the exact date rent was to be paid.

The Tenant in the hearing acknowledged not paying their rent on time consistently over the course of the tenancy that began in 2022. The Tenant in the hearing confirmed that they had not yet paid March rent by the date of the hearing on March 30, 2023.

For these reasons, I find the 10-Day Notice issued by the landlord on March 2, 2023 is valid. By reason of the Tenant confirming their non-payment of rent, I dismiss the Tenant's Application to cancel the 10-Day Notice.

Under s. 55 of the *Act*, when a tenant's Application to cancel a notice to end tenancy is dismissed and I am satisfied the document complies with the requirements under s. 52 regarding form and content, I must grant a landlord an order of possession.

Here I find the 10-Day Notice complies with the requirements of form and content; therefore, the Landlord is entitled to an order of possession.

The *Act* s. 55(1.1) provides that I must grant an order requiring the payment of the unpaid rent. As per the 10-Day Notice, and minus any other evidence showing payment thereof, I grant the outstanding rent amount of \$2,346 with a Monetary Order. Any NSF or late fees imposed by the Landlord are not "rent" as defined in the *Act* and set out in s. 55(1.1); therefore, the Landlord must make a separate application should they wish to recover that amount.

I am bound by this section in the *Act* to grant the Landlord recovery of unpaid rent only. As of the date of this decision, the April 2023 rent was not yet unpaid; therefore, I decline to grant recovery of that amount to the Landlord.

Conclusion

For the reasons outlined above, I dismiss the tenant's Application for a cancellation of the 10-Day Notice.

I grant an Order of Possession to the Landlord effective two days after service of this Order on the Tenant. Should the Tenant fail to comply with this Order of Possession, the Landlord may file this Order in the Supreme Court of British Columbia where it may be enforced as an order of that Court.

Pursuant to s. 55(1.1) of the *Act*, I grant the Landlord a Monetary Order for the recovery of the unpaid rent. This amount is \$2,346. The Landlord is provided with this Order in the above terms, and they must serve the Tenant with this Order as soon as possible. Should the Tenant fail to comply with this Order, the Landlord may file this Order in the Small Claims Division of the Provincial Court where it may be 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 s. 9.1(1) of the *Act*.

Dated: March 30, 2023

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Residential Tenancy Branch