



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      CNR

### Introduction

The Tenant seeks an order pursuant to s. 46 of the *Residential Tenancy Act* (the “*Act*”) cancelling a 10-Day Notice to End Tenancy signed on March 2, 2023 (the “10-Day Notice”).

S.S. appeared as the Landlord. The Tenant did not attend the hearing, nor did someone attend on their behalf.

Pursuant to Rule 7.1 of the Rules of Procedure, the hearing began as scheduled in the Notice of Dispute Resolution. As the Tenant did not attend the hearing for their own application, it was conducted in their absence as permitted by Rule 7.3 of the Rules of Procedure. The hearing concluded at 2:45 without participation from the Tenant.

The Landlord affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Landlord indicates that he served his response evidence on the Tenant via email sent on March 14, 2023. The Landlord further advises that email is an approved form of service. I was directed to a RTB-51 Address for Service form signed by the parties on March 12, 2023 in which emails are exchanged. I find that the Landlord has served his response evidence in accordance with s. 89 of the *Act*. Pursuant to s. 44 of the Regulation, I find that the Tenant received the Landlord’s response evidence on March 17, 2023.

The Landlord testified that he did not receive any evidence from the Tenant. As the Tenant did not attend the hearing to demonstrate service of her evidence, I find that her evidence was not served. Accordingly, it is not included and shall not be considered by me.

### Issues to be Decided

- 1) Is the 10-Day Notice enforceable?
- 2) If so, is the Landlord entitled to an order of possession and 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.

The Landlord confirmed the following details with respect to the tenancy:

- The Tenant moved into the rental unit on March 1, 2021.
- Rent of \$1,295.00 is due on the first of each month.
- A security deposit of \$647.50 was paid by the Tenant.

I am provided with a copy of the tenancy agreement by the Landlord.

The Landlord testified that the Tenant is in arrears of rent in the amount of \$11,537.50. I am directed to a spreadsheet in the Landlord's evidence detailing how this figure was arrived at along with the Landlord's bank statements.

The Landlord says that he served the 10-Day Notice on the Tenant by posting it to her door on March 2, 2023. I am provided with a copy of the 10-Day Notice by the Landlord as well as a proof of service form confirming the method and time of service.

At the hearing, the Landlord advises that he and the Tenant signed a mutual agreement to end tenancy on March 12, 2023. I am provided with a copy of the mutual agreement, which shows the tenancy is to end at 12:00 PM on April 1, 2023. I enquired on the context in which the mutual agreement was signed and the Landlord advised that the correspondence between the parties leading up to the agreement was done via email, copies of which were provided in his evidence.

Review of the correspondence provided to me shows a series of emails between the Landlord and the Tenant on March 12, 2023. The first of which, sent by the Landlord, states the following:

Hi [Tenant]

Thanks for the email. I haven't received any documents via text or email.

Tomorrow, I will be starting an Application for Dispute Resolution by Direct Request. Requesting an order of possession, monetary order for unpaid rent and utilities, and landlord monetary order for the cost of filing for the direct request.

I really don't want to do any of this. Unfortunately, I don't feel like you've been acting in good faith.

In saying that, we are not heartless, and I thought of a solution that might be beneficial for both of us. [C.S.] and I just want to move on with our lives. Since you are planning to move out this month anyway. If you agree to sign a Mutual Agreement to end a Tenancy, move out date on April 1st. We'll help with your moving expenses.

Let me know. I can stop by tomorrow afternoon.

Thanks, [Landlord]

The Tenant responded to the Landlord shortly thereafter, stating the following:

I am interested in this but I am wondering what about the previous money owed what happens with that?

The Landlord responded to the Tenant's question as follows:

Hi [Tenant]

[C.S.] and I have always acted in good faith. I'm still going to apply for dispute resolution and will withdraw it once you move out.

Signing a Mutual Agreement to End a Tenancy, gets you off the hook for the current/outstanding rent. We just want to move on. See the fine print below.

NOTE: This form is NOT a Notice to End Tenancy. Neither a Landlord nor a Tenant is under any obligation to sign this form. By signing this form, both parties understand and agree the tenancy will end with **no further obligation** between landlord(s) or tenant(s). If you are the tenant, this may include foregoing any compensation you may be due if you were served a Notice to End Tenancy. If you have questions about tenant or landlord rights and responsibilities under the Residential Tenancy Act or the Manufactured Home Part Tenancy Act, contact the Residential Tenancy Branch using the information provided at the bottom of this form before you sign.

If you don't move by April 1st, we will apply for a writ of possession. Once we get that, hire a bailiff. I'm hoping to avoid all of this.

Hopefully, this clears things up.

[Landlord]

The Tenant responded to the Landlord as follows:

Oh wow thank you so much I do absolutely agree to this. I appreciate you guys.

The Landlord testified that the Tenant still occupied to the rental unit as at the time of the hearing, though says that she advised him she would be moving out by 8:00 PM on March 29, 2023.

The Landlord still seeks an order of possession.

### Analysis

The Tenant applies to cancel the 10-Day Notice.

Pursuant to s. 46(1) of the *Act*, where a tenant fails to pay rent when it is due, a landlord may elect to end the tenancy by issuing a notice to end tenancy that is effective no sooner than 10-days after it is received by the tenant. Pursuant to s. 46(4) of the *Act*, a tenant has 5-days from receiving a 10-day notice to end tenancy to either pay the

overdue rent or file an application to dispute the notice. If a tenant files to dispute the notice, the burden of proving it was issued in compliance with s. 46 of the *Act* rests with the respondent landlord.

I accept the undisputed evidence of the Landlord that the 10-Day Notice was posted to the Tenant's door on March 2, 2023. I find that this was done in accordance with s. 88 of the *Act*. Review of the information on file shows that the Tenant filed her application on March 2, 2023. Inferring from this, I accept that the Tenant likely received the 10-Day Notice on March 2, 2023.

As per s. 46(2) of the *Act*, all notices issued under s. 46 must comply with the form and content requirements set by s. 52 of the *Act*. I have reviewed the 10-Day Notice and find that it complies with the formal requirements of s. 52 of the *Act*. It is signed and dated by the Landlord, states the address for the rental unit, states the correct effective date, sets out the grounds for ending the tenancy, and is in the approved form (RTB-30).

I accept the undisputed evidence from the Landlord that the Tenant failed to pay rent as alleged. On this basis, I find that the Landlord has proven that the 10-Day Notice was properly issued under s. 46 of the *Act*. Accordingly, the Tenant's application to cancel the 10-Day Notice is dismissed without leave to reapply.

Section 55(1) of the *Act* provides that where a tenant's application to cancel a notice to end tenancy is dismissed and the notice complies with s. 52, then I must grant the landlord an order for possession. As that is the case here, I grant the Landlord an order of possession. Given the mutual agreement to end tenancy provided to me by the Landlord, I make that order of possession effective at 12:00 PM on April 1, 2023. I do so on the basis that it gives effect to the parties' settlement of the issue.

This brings up the issue of unpaid rent. Pursuant to s. 55(1.1) of the *Act*, if a tenant's application to cancel a notice to end tenancy for unpaid rent is dismissed and the notice complies with the formal requirements of s. 52, then I must grant an order for unpaid rent. Though I am satisfied that rent was unpaid, I decline to grant an order for unpaid rent on the basis that such an order would run contrary to the parties' settlement. The email exchange of March 12, 2023 is unambiguous: the Landlord would forego his claim to "current/outstanding rent" in exchange for the Tenant leaving by April 1, 2023. Considering this, I find that settlement estoppel applies such that no order for unpaid rent could rightly be made at this time.

However, I note that this finding is premised on the Tenant vacating by April 1, 2023. Should she fail to do so, there is likely an argument to be made that settlement estoppel would not apply as the Tenant failed to live up to her end of the bargain, thereby potentially opening the Tenant to the Landlord's claim for unpaid rent. I make these comments without prejudging this issue and do so in the hope that the parties go their separate ways in keeping with their correspondence of March 12, 2023.

### Conclusion

I dismiss the Tenant's application to cancel the 10-Day Notice without leave to reapply.

The Landlord is entitled to an order of possession under s. 55(1) of the *Act*. I order that the Tenant provide vacant possession of the rental unit to the Landlord by no later than 12:00 PM on April 1, 2023.

I decline to grant an order for unpaid rent under s. 55(1.1) of the *Act* as settlement estoppel currently applies.

It is the Landlord's obligation to serve the order of possession on the Tenant. 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: March 29, 2023

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Residential Tenancy Branch