



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      CNR, RR, FFT

### Introduction

The Tenant seeks the following relief under the *Residential Tenancy Act* (the “Act”):

- an order pursuant to s. 46 cancelling a 10-Day Notice to End Tenancy signed on March 3, 2023 (the “10-Day Notice”);
- an order pursuant to s. 65 for a rent reduction; and
- return of the filing fee pursuant to s. 72.

M.A. appeared as the Landlord. M.M. appeared as the Landlord’s witness with respect to service. M.R. attended at the outset of the hearing and identified herself as the Landlord’s witness, though was asked to disconnect until she was called upon to provide testimony. M.R. was not called and provided no evidence.

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 parties 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 advised that she was not served with the Notice of Dispute Resolution by the Tenant but was prepared to proceed despite not having been served by the Tenant. On this basis, I find it is appropriate to proceed with the application.

M.M. testified that she served the Tenant with the Landlord's response evidence by posting it to their door on March 24, 2023. M.M. further testified that she attended the property some hours later to find that the Landlord's evidence package was no longer on the door.

The methods for serving documents in dispute resolution proceedings is set out in s. 89 of the *Act*. In this instance, s. 89(1) of the *Act* applies as this is not an application by the Landlord for an order of possession under ss. 55, 56, or 56.1. The methods of service set out under s. 89(1) of the *Act* do not permit service by leaving documents on the door or some other conspicuous space. Accordingly, I cannot find that the Landlord's evidence was served in accordance with the *Act*. Given the Landlord's evidence was not properly served, I do not include it and shall not consider it except for the 10-Day Notice and the tenancy agreement.

I note that the 10-Day Notice provided by the Landlord is the same as that provided by the Tenant. As the Tenant clearly received the 10-Day Notice, having filed to dispute the notice, I include this document provided to me by the parties. I also include the tenancy agreement as it has been signed by the Tenant such that I am satisfied that they have a copy themselves.

#### Preliminary Issue – Tenant's Rent Reduction Claim

Rule 6.6 of the Rules of Procedure sets out that applicants primarily bear the burden of proving their claims except for when a tenant files to dispute a notice to end tenancy, in which case the onus shifts to the respondent landlord.

In this instance, the Tenant bears the burden of proving their rent reduction claim. As they failed to attend the hearing and provide evidence on their claim, I find that the Tenant has failed to prove the claim. Accordingly, I dismiss the Tenant's claim under s. 65 of the *Act* for a rent reduction without leave to reapply.

The hearing proceeded strictly on the issue of the enforceability of the 10-Day Notice.

#### 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?

### Evidence and Analysis

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 September 3, 2022.
- Rent of \$2,350.00 is due on the 1<sup>st</sup> of each month. The Landlord advised that rent had initially been due on the 28<sup>th</sup>, though this was never followed from October 1, 2022 onwards.
- The Tenant paid a security deposit of \$700.00 to the Landlord.

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.

The Landlord advises that the 10-Day Notice was left in the Tenant's mail slot on March 2, 2023. I find that this was done in accordance with s. 88 of the *Act*. Pursuant to s. 90 of the *Act*, I deem that the Tenant received the 10-Day Notice on March 5, 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 provided to me by the parties 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, sets out the grounds for ending the tenancy, and is in the approved form (RTB-30). The effective date of the 10-Day Notice is incorrect as it was deemed received on March 5, 2023, though this small deficiency is immaterial as it is corrected automatically pursuant to s. 53 of the *Act*.

The Landlord advises that the Tenant owes rent from February 2023 in the amount of \$2,200.00 and has not paid rent for March or April 2023. The Landlord further advises that the Tenant has not paid rent at all since the 10-Day Notice was served.

I accept the Landlord's undisputed evidence that the Tenant failed to pay rent as set out above. Pursuant to s. 26(1) of the *Act*, a tenant must pay rent when it is due whether or not the landlord complies with the *Act*, the Regulations, or the tenancy agreement unless the *Act* grants the tenant the right to deduct all or a portion of the rent. The *Act* establishes a limited set of circumstances in which a tenant may deduct money from rent, none of which are applicable based on the evidence before me as the Tenant did not attend the hearing to speak to the reasons why they did not pay rent.

I find that the Landlord has established that the 10-Day Notice was issued in accordance with the *Act*. The Tenant's application cancelling the 10-Day Notice is hereby 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 effective two days after it is received by the Tenant.

Section 55(1.1) of the *Act* provides that where 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. As set out above, the Landlord has established that the Tenant has failed to pay rent totalling \$6,900.00 (\$2,200.00 + \$2,350.00 + \$2,350.00). Accordingly, I find that the Landlord is entitled to unpaid rent in this amount.

I exercise my discretion pursuant to s. 72(2) of the *Act* and direct that the Landlord retain the security deposit and interest owed to the Tenant in partial satisfaction of her unpaid rent claim. Making use of the interest calculator provided by the Residential Tenancy Branch, this shows that the Landlord is to retain \$703.78 from the Tenant.

Taking the amounts above into account, I order the Tenant pay \$6,196.22 (\$6,900.00 - \$703.78) to the Landlord in unpaid rent.

### Conclusion

I dismiss the Tenant's claim under s. 65 of the *Act* without leave to reapply.

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

I find that the Tenant was unsuccessful in his application. Their claim under s. 72(1) of the *Act* is dismissed without leave to reapply.

The Landlord is entitled to an order of possession under s. 55(1) of the *Act*. The Tenant shall provide 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 under s. 55(1.1) of the *Act*. Less the security deposit and interest to be retained by the Landlord as per my direction made under s. 72(2) of the *Act*, the Tenant is to pay **\$6,196.22** to the Landlord.

It is the Landlord's obligation to serve these orders 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: April 11, 2023

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Residential Tenancy Branch