



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## DECISION

Dispute Codes      **TT: CNR-MT**  
                             **LL: OPR-DR MNR-DR FFL**

### Introduction

This hearing dealt with two applications pursuant to the *Residential Tenancy Act* (the “Act”). The Tenant made one application (“Tenant’s Application”) for:

- an extension of time to make the Tenant’s Application pursuant to section 66.1;
- if an extension of time to make the Tenant’s Application is granted, then an order for cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent and/or Utilities dated January 17, 2023 (“10 Day Notice”) pursuant to section 46

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The Landlord made one application (“Landlord’s Application”) for:

- an Order of Possession pursuant to sections 46 and 55;
- a monetary order for unpaid rent under sections 55; and
- authorization to recover the filing fee for the Landlord’s Application from the Tenant pursuant to section 72.

The original hearing of the Application was held on March 13, 2023 (“Original Hearing”). An agent (“KS”) for the Landlord and an advocate (“TH”) for the Tenant attended the Original Hearing. I explained the hearing process to the parties who did not have questions when asked. I told the parties they are not allowed to record the hearing pursuant to the *Residential Tenancy Branch Rules of Procedure* (“RoP”). The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

At the Original Hearing, KS and TH requested an adjournment of the hearing in order to continue negotiations toward a resolution to the dispute between the parties. Pursuant to Rule 7.8 of the RoP, I adjourned the hearing and issued an interim decision (“Interim

Decision”) dated March 13, 2023. The Interim Decision stated the Landlord and Tenant were permitted to serve, and submit to the Residential Tenancy Branch (“RTB”), with additional evidence. The RTB served the Notice of Adjourned Hearing and Interim Decision on the parties. The adjourned hearing (“Adjourned Hearing”) was scheduled for April 18, 2023. KS and TH attended the Adjourned Hearing and they were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

At the Original Hearing, KS stated the Landlord served the Notice of Dispute Resolution Proceeding and its evidence (collectively the “Landlord’s NDRP Package”) for the Landlord’s Application on the Tenant by registered mail on February 19, 2023. KS submitted into evidence a copy of the Canada Post receipt and tracking stub for service of the Landlord’s NDRP Package on the Tenant to corroborate his testimony. Based on the foregoing, I find the Landlord’s NDRP Package was served on the Tenant by registered mail in accordance with the provisions of sections 88 and 89 of the Act.

At the Original Hearing, TH stated the Tenant served the Notice of Dispute Resolution Proceeding (the “Tenant’s NDRP”) for the Tenant’s Application on the Landlord by registered mail on February 10, 2023. TH provided the Canada Post tracking number for service of the Tenant’s NDRP to corroborate his testimony. Based on the foregoing, I find the Tenant’s NDRP was served on the Landlord by registered mail in accordance with the provisions of section 89 of the Act.

At the Original Hearing, TH stated the Tenant did not serve any evidence on the Landlord.

#### Issues to be Decided

- Is the Tenant entitled to an extension of time to make the Application to dispute the 10 Day Notice?
- If the Tenant is entitled to an extension of time to make the Application, is she entitled to cancellation of the 10 Day Notice?
- If the 10 Day Notice is not cancelled, is the Landlord entitled to an Order of Possession and a monetary order for unpaid rent and/or utilities pursuant to section 55 of the Act?

### Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Application and my findings are set out below.

KS submitted into evidence a copy of the tenancy agreement and addenda, dated October 11, 2022, between the Landlord and Tenant. The tenancy agreement states the tenancy commenced on October 15, 2022 on a month-to-month basis. KS stated the rent, after a subsidy was \$1,185.00 per month. The Tenant was required to pay a security deposit of \$569.50. KS stated the Tenant paid the security deposit and that the Landlord is holding the deposit in trust for the Tenant. Based on the foregoing, I find there is a residential tenancy between the parties and that I have jurisdiction to hear the Application.

KS stated the Landlord served the 10 Day Notice on the Tenant's door on January 17, 2023. KS submitted into evidence a copy of a signed and witnessed Proof of Service on Form RTB 34 which certified the 10 Day Notice was served on the Tenant's door on January 17, 2023. The 10 Day Notice stated the Tenant owed \$1,184.95 for unpaid rent as of January 1, 2023. KS stated the rental arrears were calculated as follows:

Date	Rent Owed	Paid	Balance
31-Dec-22			-\$0.05
01-Jan-23	\$1,185.00		\$1,184.95
<b>Total</b>	<b>\$1,185.00</b>		<b>\$1,184.95</b>

KS submitted into evidence a Direct Request Worksheet on Form RTB-46, together with a copy of the ledger documenting the payments made by the Tenant and the rental arrears, to corroborate his testimony.

TH stated the Tenant was one day late making the Application because she was assaulted by her domestic partner. KS stated he sent the Tenant an email about three weeks before the Adjourned Hearing. KS stated he finally received a response to his email from the Tenant in the morning prior to the Adjourned Hearing in which the Tenant stated she was recanting the allegation she made against her domestic partner.

## Analysis

### **1. Claim for an Extension of Time to Make Application**

KS stated the 10 Day Notice was served on the Tenant's door on January 17, 2023 and provided a signed and witnessed Proof of Service. KD did not dispute this testimony. As such, I find the Landlord has proven, on a balance of probabilities, that the 10 Day Notice was served on the Tenant's door on January 17, 2023. Pursuant to section 90 of the Act, the Tenant was deemed to have received the 10 Day Notice on January 20, 2023.. Pursuant to section 46(4) of the Act, the Tenant had 5 days, or January 25, 2023, within which to dispute the 10 Day Notice. The records of the RTB disclose the Tenant made the Application on January 26, 2023.

TH stated the Tenant was one day late making the Application because she had been assaulted by her domestic partner. The Tenant did not submit any evidence to support TH's statement that she was assaulted by her domestic partner or some other reason that she was unable to make the Application by January 17, 2023.

*Residential Tenancy Policy Guideline 36* ("PG 36") provides guidance on when an arbitrator may extend the time limit to apply for dispute resolution with the RTB. PG 36 states, in part:

[...]

#### **Exception Circumstances**

The word "exceptional" means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend that time limit. The word "exceptional" implies that the reason for failing to do something at the time required is very strong and compelling. Furthermore, as one Court noted, a "reason" without any force of persuasion is merely an excuse. Thus, the party putting forward said "reason" must have some persuasive evidence to support the truthfulness of what is said.

The evidence which could be presented to show the party could not meet the time limit due to being in the hospital could be a letter, on hospital letterhead, stating the dates during which the party was hospitalized and indicating that the party's condition prevented their contacting another person to act on their behalf.

[...]

The Tenant did not submit any evidence in support of an extension of time. As such, I find the Tenant has not proven, on a balance of probabilities, that there were no exceptional that prevented her from Making the Application by January 17, ,2023. Based on the foregoing, I dismiss the Application without leave to reapply. Notwithstanding I have dismissed the Application, the Landlord is nevertheless required to prove the 10 Day Notice was served for a valid reason.

## ***2. Order of Possession and Monetary Order for Unpaid Rent***

KS provided a Direct Request Worksheet on Form RTB-46, and a copy of the ledger documenting the payments made by the Tenant and amount of the rental arrears, to corroborate his testimony the Tenant had rental arrears of \$1,184.95. Based on the foregoing, I find the Landlord has proven, on a balance of probabilities, that the Tenant owed the Landlord 1,184.95 for unpaid rent when the 10 Day Notice was served on the Tenant.

Sections 26(1), 46 and 53 of the Act state:

- 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.
- 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]*.
  - (3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.
  - (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.

- (5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant
  - (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
  - (b) must vacate the rental unit to which the notice relates by that date.

Pursuant to section 26(1) of the Act, a tenant must pay rent when it is due whether 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. Section 43 provides that Ten Day Notice to End Tenancy has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under the Act to deduct from rent. No testimony was given, or evidence was presented at the hearing, to prove the Tenant had any right under the Act to deduct all or any portion of the rent for January 2023. As such, I find the Tenant did not have any right to deduct all or any portion of the rent of \$1,184.95 owing for January 2023. Based on the foregoing, I find the Landlord has proven, on a balance of probabilities, that there was cause to end the tenancy pursuant to section 46(1) of the Act.

In order for the 10 Day Notice to be effective, section 46(2) of the Act requires Notice to comply with section 52 of the Act. Section 52 states:

- 52 In order to be effective, a notice to end a tenancy must be in writing and must
  - (a) be signed and dated by the landlord or tenant giving the notice,
  - (b) give the address of the rental unit,
  - (c) state the effective date of the notice,
  - (d) except for a notice under section 45 (1) or 2) [*tenant's notice*], state the grounds for ending the tenancy,
  - (d.1) for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied by a statement made in accordance with section 45.2 [*confirmation of eligibility*], and
  - (e) when given by a landlord, be in the approved form.

I have reviewed the 10 Day Notice and find it complies with the section 52 form and content requirements.

Sections 55(1) and 55(1.1) of the Act state:

- 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.

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 section 52 of the Act, then I must grant the landlord an Order of Possession. During the hearing, KS stated the Landlord was agreeable to giving the Tenant until April 30, 2023 to vacate the rental unit. Based on the foregoing, pursuant to section 55(1) of the Act, I grant the Landlord an Order of Possession of the rental unit requiring the Tenant to deliver vacant possession of the rental unit by 1:00 pm on April 30, 2023 to the Landlord, after being served with a copy of this decision and attached Order of Possession by the Landlord. Pursuant to section 68(2)(a), I find the tenancy ended on April 18, 2023.

As noted above, I have found the Tenant had rental arrears of \$1,184.95 as of January 1, 2023. Pursuant to section 55(1.1) of the Act, I order the Tenant pay the Landlord \$1,185.95 in satisfaction of the rental arrears owed. Pursuant to section 72(2)(b), the Landlord may deduct the Tenant's security deposit of \$569.50 from the rental arrears owed by the Tenant, leaving a balance of \$615.45.

### 3. *Reimbursement of the Filing Fee for the Application*

As the Landlord has been successful in the Application, I order that the Landlord may recover the \$100.00 filing fee for the Application from the Tenant pursuant to section 72(1) of the Act.

#### Conclusion:

The Landlord is granted an Order of Possession requiring the Tenant to vacate the rental unit by 1:00 pm on April 30, 2023, after being served with a copy of this decision and attached Order of Possession by the Landlord. This Order of Possession may be filed by the Landlord in the Supreme Court of British Columbia and enforced as an Order of that Court.

I order the Tenant to pay the Landlord \$715.45, representing the following:

<b>Description</b>	<b>Amount</b>
Rental Arrears for January 2023	\$1,184.95
Landlord's Filing Fee for Application	\$100.00
Less Tenant's Security Deposit	-\$569.50
<b>Balance:</b>	<b>\$715.45</b>

This Monetary Order must be served by the Landlord on the Tenant and may be enforced in Provincial 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 19, 2023

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Residential Tenancy Branch