



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

A matter regarding 322 CAMBIE PROPERTIES LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**     OPR, MNRL

### **Introduction**

The Application for Dispute Resolution (the Application) was filed by the Landlord under the *Residential Tenancy Act* (the Act), on December 21, 2021, seeking:

- An order of possession because the Tenant neither paid the rent owed nor filed an Application for Dispute Resolution seeking cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (10 Day Notice) within the required time period; and
- Recovery of unpaid rent.

The hearing was convened by telephone conference call at 9:30 am on April 27, 2023, and was attended an Agent for the Landlord TJ (the Agent), who provided affirmed testimony. No one attended on behalf of the Tenant. The Agent was provided the opportunity to present their evidence orally and in written and documentary form, to call witnesses, and to make submissions at the hearing.

The Agent was advised that inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The Agent was asked to refrain from speaking over me and one another and to hold their questions and responses until it was their opportunity to speak. The Agent was also advised that personal recordings of the proceedings were prohibited under the Residential Tenancy Branch Rules of Procedure (Rules of Procedure) and confirmed that they were not recording the proceedings.

The Rules of Procedure state that the respondent must be served with a copy of the Application, the Notice of Hearing, and any documentary evidence intended to be relied

upon at the hearing by the applicant(s). As the Tenant did not attend the hearing, I confirmed service of these documents as explained below.

The Agent testified in the hearing that the Notice of Dispute Resolution Proceeding package (NODRP), which includes the Application and the Notice of Hearing, along with the documentary evidence before me from the Landlord, was posted to the door of the rental unit on December 24, 2022, by another agent for the Landlord, SI, in their presence. As a result, and in the absence of any evidence to the contrary, I find that the Tenant was deemed served the above noted documents on December 27, 2022, pursuant to section 90(c) of the Act.

Residential Tenancy Branch (Branch) records indicate that the NODRP was emailed to the Landlord on December 22, 2022. Although the Landlord was not permitted to post the NODRP to the door of the rental unit under section 89(1) of the Act, I am satisfied that the Tenant received it based on the Agent's testimony. As I am satisfied that the NODRP was posted to the door of the rental unit two days later, on December 24, 2022, and received, I order that it was sufficiently given or served for the purposes of the Act pursuant to section 71(2)(c) of the Act.

I confirmed that the hearing details shown in the NODRP were correct and I note that the Agent was able to attend the hearing using this information. Rule 7.1 of the Rules of Procedure states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. Rule 7.3 of the Rules of Procedure states that if a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party. Based on the above, I commenced the hearing as scheduled, despite the absence of the Tenant or an agent acting on their behalf.

I refer only to the relevant and determinative facts, evidence, and issues in this decision. At the request of the Agent, a copy of the decision and any orders issued in favor of the Landlord will be sent to them by email.

#### Preliminary Matters

As per the Agent's request, the Application was amended at the hearing pursuant to rule 4.2 of the Rules of Procedure to include additional rent owed since the date the Application was filed.

Issue(s) to be Decided

Is the Landlord entitled to an order of possession pursuant to sections 46 and 55 of the Act?

Is the Landlord entitled to recovery of unpaid rent pursuant to sections 26 and 67 of the Act?

Background and Evidence

The Agent testified that the 10 Day Notice was sent to the Tenant by registered mail on October 18, 2022, at the rental unit address, and returned as unclaimed. A proof of service document was also submitted, along with registered mail tracking information and a copy of the fully addressed registered mail label.

The 10 Day Notice in the documentary evidence before me, dated October 18, 2022, has an effective vacancy date of November 1, 2022, and indicates that \$3,664.00 in outstanding rent was owed as of October 1, 2022. The Agent stated that as the Tenant neither disputed the 10 Day Notice, nor paid any rent since the 10 Day Notice was served, the Landlord is seeking an order of possession as soon as possible. The Agent submitted a ledger showing that rent in the amount of \$458.00 per month is owed by the Tenant from March 1, 2022 – April 30, 2023, totalling \$6,412.00

Although the teleconference remained open for the 14-minute duration of the hearing, no one attended on behalf of the Tenant to provide any evidence or testimony for consideration.

Analysis

As there is no evidence or testimony before me to the contrary, I accept the following as fact:

- Rent in the amount of \$458.00 is due each month by the Tenant;
- The Tenant has not paid any rent for the period of March 1, 2022 – April 30, 2023;
- The Tenant currently owes \$6,412.00 in outstanding rent;
- The Tenant was sent the 10 Day Notice by registered mail at the rental unit address on October 18, 2022;
- The Tenant has not disputed the 10 Day Notice; and

- The Tenant has not paid any rent since before March 1, 2022.

Based on the above, I find that the Tenant was deemed served with the 10 Day Notice on October 23, 2022, five days after it was sent to them at the rental unit by registered mail.

Section 46(4) of the Act states that a tenant may either pay the amount shown in outstanding rent, or dispute a notice under this section by making an application for dispute resolution within 5 days after the date the tenant receives the notice. Section 46(5) of the Act also states that if a tenant who has received a notice under this section does not comply with section 46(4), the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date.

Based on the affirmed testimony of the Agent and as there is no evidence before me to the contrary, I find that the Tenant did not dispute the 10 Day Notice within the 5-day period provided for under the Act, or pay the amounts owed, and that the time for doing so has expired. The Tenant is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the corrected effective date of the 10 Day Notice, November 2, 2022, which I have corrected pursuant to section 53 of the Act. As a result, and as I find that the 10 Day Notice complies with section 52 of the Act, I therefore grant the Landlord an order of possession pursuant to section 55(2)(b) of the Act.

Section 55(3) of the Act states that the director may grant an order of possession before or after the date when the tenant is required to vacate a rental unit and that the order takes effect on that date. As the corrected effective date of the 10 Day Notice has passed, and the Tenant has not paid rent in 14 months, the order of possession will be effective two days after service on the Tenant.

Pursuant to section 67 of the Act, the Landlord is also granted a monetary order for unpaid rent in the amount of \$6,412.00, and I order the Tenant to pay this amount to the Landlord.

### Conclusion

Pursuant to sections 55(2)(b) and 55(3) of the Act, I grant an order of possession to the Landlord effective **two days after service** of this order on the Tenant. The Landlord is

provided with this order in the above terms and the Tenant must be served with this order as soon as possible. Should the Tenant fail to comply with this order, it may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

Pursuant to section 67 of the Act, I grant the Landlord a monetary order in the amount of **\$6,412.00**. The Landlord is provided with this order in the above terms and the Tenant must be served with this order as soon as possible. Should the Tenant fail to comply with this order, it may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Branch under Section 9.1(1) of the Act.

Dated: April 27, 2023

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Residential Tenancy Branch