



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

A matter regarding 0957661 B.C. Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR-DR, FFL  
                                CNR-MT

### Introduction

This hearing dealt with an application filed by both the corporate landlord and the tenant pursuant to the Residential Tenancy Act (the “Act”):

The landlord applied for:

- an Order of Possession based on the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent (the 10-Day Notice) pursuant to sections 46 and 55; and,
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- cancellation of the landlord’s 10-Day Notice and an extension of the time limit to dispute the 10 Day Notice pursuant to sections 46 and 66.

LH, the tenant appeared at the hearing with DS and AR as their advocates. KP and AP appeared as agents for the corporate landlord.

As both parties were in attendance, I confirmed that there were no issues with service of the Notice of Dispute Resolution Proceeding package and evidence. In accordance with sections 88 and 89 of the Act, I find that both parties were served with the other’s application materials.

The parties were cautioned that recording of the hearing is prohibited pursuant to Rule of Procedure 6.11. The parties were given full opportunity under oath to be heard, to present evidence and to make submissions.

### Preliminary Matter

At the outset of the hearing the parties confirmed that LH is the daughter of AH who is named as the tenant on the tenancy agreement which has been submitted into evidence. AP argued that no tenancy exists between the landlord and LH.

LH confirmed that their mother AH passed away on November 15, 2022. LH testified that they lived with their mother in the rental unit for more than two years prior to her passing. Submitted into the evidence by LH is a copy of AH's Last Will and Testament which names LH as Executrix.

Section 1 of the Act states that "tenant" includes the estate of a deceased tenant. On that basis, I find that because LH is acting as the executrix of AH's estate, LH is the tenant as defined by the Act.

### Issue(s) to be Decided

Is the tenant entitled to more time to cancel the landlord's 10 Day Notice?  
Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

### Background and Evidence

While I have considered the documentary evidence and the testimony of the parties not all of the details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties agreed that the tenancy began between AH and the previous owner of the building on June 1, 2015. The current owner and landlord of the building purchased the property in January 2021. Monthly rent is \$544.17 payable on the first of each month. The Landlord collected a security deposit in the amount of \$247.50 from AH, which the landlord continues to hold in trust.

AP testified that the 10-Day Notice was served to the tenant by posting it to the door on January 12, 2023. AP testified that the 10-Day Notice was issued because the tenant failed to pay rent on January 1, 2023, in the amount of \$533.33. AP testified that the tenant paid the outstanding rent on January 26, 2023, which was accepted for use and occupancy only. AP directed my attention to Use and Occupancy Receipts for the

months of January, February, March, April, and May 2023 which are submitted into evidence. AP testified that no rent is currently outstanding.

In response to AP's submissions, the tenant testified that they received the 10-Day Notice on their door but that they were away when the 10-Day Notice was posted there. The tenant testified that other tenants in the building were aware that they were away and advised the person posting the 10-Day Notice to the door of this. The tenant testified that they were away from the rental unit for approximately four or five days and received the 10-Day Notice upon their return. The tenant agreed that they did not pay rent that was due on January 1, 2023, and that they paid rent on January 26, 2023.

In response to the tenant's testimony, AH testified that even if the tenant received the 10-Day Notice when they returned from being away, they could have paid the outstanding rent or applied for dispute resolution before they did.

### Analysis

Section 26 of the Act requires tenants to pay rent on time unless they have a legal right to withhold some of the rent. Section 46(1) of the Act allows landlords to end a tenancy if the tenant does not pay rent on time by issuing a 10 Day Notice to End Tenancy for Unpaid Rent.

The uncontested evidence is that the 10-Day Notice was issued because the tenant had not paid rent for the month of January 2023 in the amount of \$533.50. Therefore, I find that the 10-Day Notice was given for a valid reason, namely, the non-payment of rent.

Pursuant to section 90 of the Act a document served in accordance with section 89 of the Act is deemed to be received if given or served by posting it to the door, on the third day after it is posted. In this case, the tenant is deemed to have received the 10-Day Notice on January 15, 2023, in accordance with section 90(c) of the Act. In accordance with section 53(2) of the Act, the effective date of the 10-Day Notice is corrected to January 25, 2023.

Section 46(4)(b) allows a tenant within five days of receiving the 10-Day Notice to dispute the Notice by making an application for dispute resolution. In this case, the tenant did not make an application for dispute resolution within the required five days and therefore, they are seeking an extension of the time limit to dispute the 10-Day Notice.

Records at this office confirm that the tenant filed an application disputing the 10-Day Notice on April 26, 2023.

Residential Tenancy Policy Guideline 36 discusses the Director's authority to extend a time limit established by the Act in exceptional circumstances. Page 2 of the Policy Guideline states:

An arbitrator may not extend the time limit to apply for arbitration to dispute a Notice to End if that application for arbitration was filed after the effective date of the Notice to End Tenancy.

Further, section 66(3) of the Act states:

The director must not extend the time limit to make an application for dispute resolution to dispute a notice to end a tenancy beyond the effective date of the notice.

The undisputed evidence before me is that the tenant filed an application to dispute the 10-Day Notice on April 26, 2023, which is a date that is beyond the corrected effective date of the notice, January 25, 2023. In accordance with Policy Guideline 36 and section 66(3) of the Act, I find that the tenant is not entitled to an extension of the time limit to dispute the 10 Day Notice. As a result, the tenant's application to dispute the 10-day Notice is dismissed without leave to re-apply.

Based on the above findings, the landlord is granted an order of possession under section 55(1) of the Act. A copy of the order of possession is attached to this Decision and must be served on the tenant. The tenant has two days to vacate the rental unit from the date of service or deemed service.

As the landlord was successful in their application, they are entitled to recover the filing fee paid for this application from the tenant. Pursuant to section 72(2)(b), the landlord is authorized to deduct \$100.00 from the security deposit to recover their filing fee.

### Conclusion

The landlord is granted an order of possession which will be effective two days after service upon the tenant. The Order of Possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

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: June 19, 2023