



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, CNR

### Introduction

The tenants filed an Application for Dispute Resolution on May 5, 2021 seeking an order that the landlord cancel or withdraw: the 10-Day Notice to End Tenancy (the “10-Day Notice”); and the One-Month Notice to End Tenancy for Cause (the “One-Month Notice”). The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the “Act”) on September 14, 2021.

The tenants did not attend the hearing; however, the landlord attended and spoke to the matter at hand. I left the teleconference hearing open until 9:42am to enable to tenants to call in to this teleconference hearing scheduled for 9:30am. I confirmed that the correct call-in numbers and participant code was provided in the Notice of Hearing. I also confirmed throughout the duration of the call that the tenants were not in attendance.

### Issues to be Decided

Are the tenants entitled to an order that the landlord cancel or withdraw the 10-Day Notice and/or the One-Month Notice?

Should the tenants be unsuccessful, is the landlord entitled to an order of possession, pursuant to s. 55 of the *Act*?

### Background and Evidence

On the Application, the tenants indicated the tenancy started on March 1, 2021. The rent amount was \$950 per month payable on the first calendar day of each month. The tenants paid a security deposit of \$350. In the hearing, the landlord confirmed these details.

The landlord issued the One-Month Notice on May 1, 2021. This gave the move-out date of May 31, 2021. The landlord provided reasons on page 2, involving disturbing other occupants during the night by swearing and arguing with each other. This was matched to the indication on the document that the tenants significantly interfered with or unreasonable disturbed another occupant or the landlord. The tenants filed their Application to challenge the validity of this One-Month Notice on May 5, 2021.

The landlord issued the 10-Day Notice on May 1, 2021 for the end-of-tenancy date of May 10, 2021. This was for a \$1,050 rent amount owing as of May 1. In their evidence, the tenants provided a screenshot of a bank transaction for April 29, 2021 showing they paid the rent. The landlord in the hearing spoke to this to explain that the rent amount was not correct, and they issued the May 1 10-Day Notice for a different reason.

In the hearing, the landlord spoke to the matter at hand. They discovered the tenants had moved out around August 22, 2021. On August 29, 2021, the landlord opened the rental unit door and discovered that everything was removed from the unit.

### Analysis

The *Act* s. 55 provides as follows:

- 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, 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.

The *Act* s. 52 requires, in these instances: the signature and date provided by the landlord; the address of the rental unit; the effective date of the notice; the grounds for ending the tenancy; the approved form.

The landlord here provided that the tenants left the rental unit, without notice to the landlord, in August 2021.

Rule 7.3 of the *Residential Tenancy Branch Rules of Procedure* provides that if a party or their agent fails to attend the hearing, the arbitrator may conduct the hearing in the absence of that party or dismiss the application without leave to re-apply.

In line with this, I dismiss the tenant's Application in line with Rule 7.3, as set out above. By s. 55 of the *Act*, I award the landlord an order of possession of the rental unit.

I find the 10-Day Notice issued by the landlord on May 1, 2021 complies with the requirements of s. 52.

I find the tenancy ended on August 22, 2021; this is the date the tenants vacated the rental unit, and it became known to the landlord. I find as fact that the tenants did not pay rent during this time after the landlord issued the 10-Day Notice on May 1, 2021. This is based on the landlord's testimony they provided in the hearing. This was without notice to the landlord.

In line with s. 55(1.1), I find the amount owing up until this date is unpaid rent. This is for the months of May through to August 2021. This amount is \$3,254.19, accounting for a pro-rated amount for August.

The *Act* s. 72(2) gives an arbitrator the authority to make a deduction from the security deposit held by the landlord. The landlord has established a claim of \$3,254.19. After setting off the security deposit, there is a balance of \$3,174.19. I am authorizing the landlord to keep the security deposit amount and award the balance of \$3,174.19 as compensation for the rent amounts owing.

### Conclusion

The landlord who attended spoke to the issue of the end of the tenancy. I find the tenancy here ended on August 22, 2021.

As the applicant tenants did not attend to present their Application, I dismiss the tenants' application for a cancellation of the Notice, without leave to reapply. I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenants. Should the tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I order the tenants to pay the landlord the amount of \$3,174.19. I grant the landlord a monetary order for this amount. The landlord may file this monetary order in the Provincial Court (Small Claims) where it can be 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 s. 9.1(1) of the *Act*.

Dated: September 14, 2021

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Residential Tenancy Branch