



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNR-MT, OLC LRE AAT FFL

### Introduction

This hearing dealt with the tenant's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) to cancel a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated December 6, 2021 (10 Day Notice), for an order directing the landlord to comply with the Act, regulation or tenancy agreement, for an order to suspend or set conditions on the landlord's right to enter the rental unit, site or property, for an order to allow access to the rental unit by the tenant or their guests and to recover the cost of the filing fee.

The landlord attended the teleconference hearing. The hearing was held by telephone conference call and began promptly at 9:31 a.m., Pacific Time, on this date, January 13, 2022. The line remained open while the phone system was monitored for 12 minutes and the only participant who called into the hearing during this time was the landlord. As the applicant tenant did not attend the hearing and after the 10-minute waiting period at 9:41 a.m. Pacific Time, the tenant's application was **dismissed without leave to reapply**. As the tenant did not attend the hearing, I consider the 10 Day Notice to be **undisputed**.

I have reviewed the Notice of Dispute Resolution Proceeding dated December 20, 2021 (Notice of Hearing) and have confirmed that the correct date and time of the hearing are listed. In addition, I have confirmed that the correct access codes were provided to both parties.

Given the above, the hearing continued without the tenant present in accordance with Rule 7.1 and Rule 7.3 of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules), which address consequences for not attending a dispute resolution hearing.

### Preliminary and Procedural Matters

The landlord was informed at the start of the hearing that recording of the dispute resolution is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. The landlord was also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the landlord was informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the Act. The landlord had no questions about my direction pursuant to RTB Rule 6.11.

In addition, the landlord confirmed their email address at the outset of the hearing and stated that they understood that the decision and any applicable orders would be emailed to them. As the tenant provided their email address in the application, the decision will be emailed to the tenant.

### Background and Evidence

The landlord affirmed that the 10 Day Notice was served on the tenant by personal service on December 6, 2021 and was witnessed by third party, AI. The landlord testified that the tenant accepted the paperwork and did not file an application in time to dispute the 10 Day Notice nor did the tenant pay the unpaid rent within 5 days of being served with the 10 Day Notice. The 10 Day Notice had an effective vacancy date of December 15, 2021. The amount listed as owed was \$750.00 due December 1, 2021.

The landlord stated that the tenant eventually paid December 2021 rent late as of December 20, 2021. The landlord stated that the tenant also owes \$200.00 for January 2022 rent. The landlord is seeking an order of possession as soon as possible as the tenant continues to occupy the rental unit and a monetary order for \$200.00 for unpaid January 2022 rent.

### Analysis

Based on the undisputed documentary evidence and the unopposed testimony provided during the hearing, and on the balance of probabilities, I find the following.

I accept that the tenant failed to pay rent for December 2021 rent within 5 days of December 6, 2021, the date in which I find the tenant was served personally with the 10 Day Notice. I also find that paying the rent late by December 20, 2021 does not invalidate the 10 Day Notice. I also find that the tenant has failed to pay \$200.00 for

January 2022 rent and I accept that the tenant continues to occupy the rental unit. Section 55 of the Act applies and states:

**Order of possession for the landlord**

**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.**

[emphasis added]

Given the above and after reviewing a copy of the 10 Day Notice, which I find complies with section 52 of the Act, I will now address the effective vacancy date. Section 53 of the Act automatically corrects an effective vacancy date. I find that the effective vacancy date automatically corrects to December 16, 2021 as the 10 Day Notice was not served until December 6, 2021. Pursuant to section 55 of the Act, I must grant an order of possession as I have dismissed the tenant's application and I find the 10 Day Notice complies with section 52 of the Act. Therefore, I grant the landlord an order of possession effective **two (2) days** after service on the tenant. I find the tenancy ended on December 16, 2021 which is the corrected effective vacancy date.

As the tenant's application was dismissed, the filing fee is not granted.

I do not find it necessary to consider any other aspect of the tenant's application as the tenancy ended based on the 10 Day Notice, which is valid.

Section 55(1.1) applies and states:

55(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.**

[emphasis added]

Given the above, I grant the landlord **\$200.00** for unpaid January 2022 rent pursuant to section 55(1.1) and 67 of the Act.

### Conclusion

The tenant's application is dismissed as the tenant failed to attend the hearing as scheduled.

The tenancy ended on December 16, 2021

The filing fee is not granted.

The landlord has been granted an order of possession effective two (2) days after service on the tenant. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

The landlord has been granted a monetary order of \$200.00. Should the landlord require enforcement of the monetary order, the landlord must first serve the tenant with the monetary order. This order may be filed in the Provincial Court of British Columbia (Small Claims) and enforced as an order of that Court.

This decision will be emailed to both parties. The order of possession and monetary order will be emailed to the landlord for service on the tenant.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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: January 13, 2022

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Residential Tenancy Branch