



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNR

### Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to section 46 of the *Act*.

The tenants and the landlord's agent (the "agent") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

Per section 95(3) of the *Act*, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

Both parties agree that the tenants served the landlord with their application for dispute resolution and evidence in person on February 18, 2022. I find that the landlord was served with the above documents in accordance with section 88 of the *Act*.

Both parties confirmed their email addresses for service of this decision and order.

Section 55(1) and section 55(1.1) of the *Act* states that if the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and the

director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice, the director must grant the landlord an order of possession and an order requiring the payment of the unpaid rent.

### Issues to be Decided

1. Are the tenants entitled to a cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to section 46 of the *Act*?
2. If the tenants' application is dismissed or the landlord's Notice to End Tenancy is upheld, and the Notice to End Tenancy complies with the *Act*, is the landlord entitled to an Order of Possession, pursuant to section 55(1) of the *Act*?
3. If the tenants' application is dismissed or the landlord's Notice to End Tenancy is upheld, and the Notice to End Tenancy complies with the *Act*, is the landlord entitled to a Monetary Order, pursuant to section 55(1.1) of the *Act*?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on June 1, 2013 and the tenants have not moved out. Monthly rent in the amount of \$1,212.00 is payable on the first day of each month. A security deposit of \$515.00 was paid by the tenants to the landlord.

Both parties agree that the landlord served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") in person on February 4, 2022. The Notice was entered into evidence and states that the tenants failed to pay rent in the amount of \$5,459.00 that was due on February 1, 2022.

The tenants testified that they owed \$5,459.00 in unpaid rent on the date the Notice was served.

Both parties agree that since the Notice was served, the following payments have been made to the landlord:

- March 21, 2022- \$1,800.00,
- April 1, 2022- \$1,400.00,
- April 27 or 28, 2022- \$1,400.00.

The agent testified that the receipts for use and occupancy only were provided to the tenants for the above three payments. This was not disputed by the tenants.

Both parties agree that the total amount of outstanding rent/use and occupancy fees, including for the entire month of May 2022 is \$5,895.00.

### Analysis

Based on the testimony of both parties, I find that the tenant was served with the Notice in person on February 4, 2022, in accordance with section 88 of the *Act*. Upon review of the Notice, I find that it meets the form and content requirements of section 52 of the *Act*.

Section 46(1) of the *Act* states that 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.

Section 46(4) of the *Act* states that 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.

Based on the testimony of both parties I find that the tenants did not pay rent when it was due and did not pay the overdue rent within five days of receiving the Notice. I therefore uphold the Notice and dismiss the tenants' application for dispute resolution.

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.

Residential Tenancy Guideline #3 (PG #3) states:

Under section 55(1.1) of the RTA (section 48(1.1) of the MHPTA), the director must grant a landlord an order requiring the tenant to pay the unpaid rent if the following conditions are met:

- the tenant has disputed a notice to end tenancy issued by the landlord for unpaid rent under section 46 of the RTA (section 39 of the MHPTA);
- the notice to end tenancy complies with section 52 of the RTA (section 45 of the MHPTA); and
- the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

This provision allows a landlord to obtain a monetary order for unpaid rent without having to file their own application. Under the legislation, the requirement to pay rent flows from the tenancy agreement. Unpaid rent is money that is due and owing during the tenancy.

Compensation for overholding under section 57 of the RTA (section 50 of the MHPTA) is not considered rent since overholding only occurs after a tenancy has ended. Compensation due to a loss of rent resulting from the tenant ending the tenancy early or by leaving the rental unit or manufactured home site in an unrentable condition is also not considered unpaid rent....

To determine whether an amount owing is for unpaid rent and must be ordered at the hearing, the director must make a finding about when the tenancy ends or ended....

If a tenant has not vacated or abandoned the unit, or the conclusive presumption does not apply, (in other words the right of possession of the rental unit or manufactured home site is in issue at the dispute resolution hearing), the director will usually rely on section 68(2) of the RTA (section 61(2) of the MHPTA) to order that the date the tenancy ends is the date of the dispute resolution hearing, rather than the effective date shown on the notice to end tenancy.

Pursuant to section 55(1) of the *Act*, I find that since the Notice complies with section 52 of the *Act* and the tenants' application to cancel the Notice was dismissed, the landlord is entitled to a two-day Order of Possession.

The tenants filed to dispute the Notice within five days of receiving it; therefore, the conclusive presumption does not apply and the right of possession of the rental unit was in issue in this hearing. Pursuant to PG #3 and section 68(2) of the *Act*, I find that the tenancy ended on today's date, May 13, 2022.

Since I have dismissed the tenant's application and have found that the Notice meets the form and content requirements of section 52 of the *Act*, I find that pursuant to section 55(1.1) of the *Act* the landlord is entitled to a monetary order for unpaid rent.

The tenants testified that as of the date of this hearing, May 13, 2022, they owed \$5,895.00 in unpaid rent (which figure includes all rent owed for the entire month of May 2022). The tenants testified that no payments for rent were made in May 2022. I find that the outstanding rent owed by the tenants on April 30, 2022, was therefore:

\$5,895.00 (total rent outstanding including rent for the entire month of May 2022)  
- \$1,212.00 (May 2022's rent) = **\$4,683.00**

I award the landlord \$4,683.00 for unpaid rent owing up to April 30, 2022. As this tenancy ended on May 13, 2022, the landlord is not entitled to unpaid rent for the entire month of May 2022, and is only entitled to rent from May 1-13, 2022, pursuant to the following calculation:

$\$1,212.00 \text{ (monthly rent)} / 31 \text{ (days in May 2022)} = \$39.09 \text{ (daily rate)}$

$\$39.09 \text{ (daily rate)} * 13 \text{ (days of tenancy in May 2022)} = \textbf{\$508.17}.$

I award the landlord \$508.17 for rent for May 1-13, 2022. If the landlord suffers damages for overholding, the landlord is at liberty to file an application for dispute resolution claiming same against the tenants.

### Conclusion

Pursuant to section 55(1) of the *Act*, I grant an Order of Possession to the landlord effective **two days after service 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 issue a Monetary Order to the landlords totalling **\$5,191.17**.

The landlord is provided with this Order in the above terms and the tenants must be served with this Order as soon as possible. Should the tenants fail to comply with this Order, this Order 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 Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: May 13, 2022

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Residential Tenancy Branch