



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding NAV LAL VISTA  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR-MT, CNC-MT, RR, LRE, PSF, LAT

### Introduction

This hearing dealt with the tenant's application, filed on April 6, 2022, pursuant to the *Residential Tenancy Act* ("Act") for:

- more time to make an application to cancel the landlord's Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, dated March 2, 2022 ("10 Day Notice"), pursuant to section 66;
- cancellation of the landlord's 10 Day Notice, pursuant to section 46;
- more time to make an application to cancel the landlord's One Month Notice to End Tenancy for Cause, dated March 31, 2022 ("1 Month Notice"), pursuant to section 66;
- cancellation of the landlord's 1 Month Notice, pursuant to section 47;
- an order allowing the tenant to reduce rent for repairs, services, or facilities agreed upon but not provided, pursuant to section 65;
- an order restricting the landlord's right to enter the rental unit, pursuant to section 70;
- an order requiring the landlord to provide services or facilities required by law, pursuant to section 65; and
- authorization to change the locks to the rental unit, pursuant to section 70.

The tenant did not attend this hearing, which lasted approximately 27 minutes. The landlord's two agents, landlord AM ("landlord's agent") and "landlord SW," attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

This hearing began at 11:00 a.m. and ended at 11:27 a.m. I monitored the teleconference line throughout this hearing. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord's two agents and I were the only people who called into this teleconference.

The landlord's two agents confirmed their names and spelling. They both confirmed that they had permission to represent the landlord company ("landlord") named in this application. The landlord's agent said that she is the office manager and landlord SW said that he is the maintenance manager, both employed by the landlord.

The landlord's agent provided her email address for me to send this decision to the landlord after the hearing. She said that the landlord owns the rental unit and provided the rental unit address. She identified herself as the primary speaker at this hearing.

Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* ("*Rules*") does not permit recording of this hearing by any party. At the outset of this hearing, the landlord's two agents both separately affirmed, under oath, that they would not record this hearing.

I explained the hearing process to the landlord's two agents. I notified them that I had 30 days to issue this decision, after the hearing date. They had an opportunity to ask questions. They did not make any adjournment or accommodation requests. They confirmed that they were ready to proceed with this hearing and they wanted me to make a decision.

The landlord's agent confirmed receipt of the tenant's application for dispute resolution and notice of hearing. She said that the landlord did not receive any evidence from the tenant with her application. In accordance with sections 88 and 89 of the *Act*, I find that the landlord was duly served with the tenant's application and notice of hearing.

The landlord's agent stated that the tenant was served with the landlord's evidence package on July 15, 2021, by way of registered mail to the tenant's rental unit address, where the tenant is still residing. The landlord provided a Canada Post receipt and the landlord's agent verbally confirmed the tracking number during this hearing.

In accordance with sections 89 and 90 of the Act, I find that the tenant was deemed served with the landlord's evidence on July 20, 2022, five days after its registered mailing. As per Rule 3.15 of the RTB *Rules*, I find that the landlord's evidence was deemed received by the tenant at least 7 days prior to this hearing date of July 28, 2022, so I considered the landlord's evidence at the hearing and in this decision.

The landlord's agent testified that the tenant was served with the landlord's 10 Day Notice on March 2, 2022, by way of posting to the tenant's rental unit door. In this application, the tenant claimed that she received the landlord's 10 Day Notice on March 22, 2022, by way of posting to her door. The landlord's agent said that the effective move-out date on the notice is March 13, 2022. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's 10 Day Notice on March 5, 2022, three days after its posting. The tenant filed this application to dispute the 10 Day Notice on April 6, 2022.

#### Preliminary Issue – Dismissal of Tenant's Application

Rule 7.3 of the RTB *Rules of Procedure* provides as follows:

*7.3 Consequences of not attending the hearing: 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, or dismiss the application, with or without leave to re-apply.*

In the absence of any appearance by the tenant, I order the tenant's entire application dismissed without leave to reapply.

Pursuant to section 55 of the *Act*, if I dismiss the tenant's application to cancel a 10 Day Notice, the landlord is entitled to an order of possession, provided that the notice meets the requirements of section 52 of the *Act*.

Pursuant to section 55 of the *Act*, if I dismiss the tenant's application to cancel a 10 Day Notice, the landlord is entitled to a monetary order for unpaid rent, without filing a separate application, provided that the notice meets the requirements of section 52 of the *Act*.

The landlord's agent stated that the tenant has paid full rent to date, so no monetary order was required by the landlord against the tenant. Accordingly, I did not issue a monetary order for unpaid rent to the landlord against the tenant.

### Issue to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent based on the 10 Day Notice?

### Background and Evidence

While I have turned my mind to the landlord's documentary evidence and the testimony of the landlord's two agents at this hearing, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below.

The landlord's agent testified regarding the following facts. This tenancy began on February 1, 2022. Monthly rent in the current amount of \$700.00 is payable on the first day of each month. A security deposit of \$350.00 was paid by the tenant and the landlord continues to retain this deposit in full. A written tenancy agreement was signed by both parties. The tenant continues to reside in the rental unit.

The landlord's agent stated the following facts. The landlord seeks an order of possession based on the 10 Day Notice. The landlord issued the 10 Day Notice for unpaid rent of \$700.00 due on March 1, 2022. The tenant paid the full March 2022 rent of \$700.00 to the landlord on April 1, 2022. The tenant paid full rent of \$700.00 per month from April to July 2022, to the landlord. The tenant was provided with rent receipts from the landlord indicating "use and occupancy only" for the above rent payments accepted by the landlord after the effective date of the 10 Day Notice.

### Analysis

The tenant did not appear at this hearing to provide any evidence or testimony and her application was dismissed without leave to reapply, as noted above.

I accept the undisputed, affirmed testimony of the landlord's two agents at this hearing and the landlord's undisputed documentary evidence at this hearing, as the tenant did not attend.

According to subsection 46(4) of the *Act*, a tenant may dispute a 10 Day Notice by making an application for dispute resolution within five days after the date the tenant received the notice. As noted above, I found that the tenant was deemed received with the 10 Day Notice on March 5, 2022. In this application, the tenant claimed that she received the landlord's 10 Day Notice on March 22, 2022. The tenant filed this application to dispute the 10 Day Notice on April 6, 2022. Therefore, the tenant is not within the five-day time limit to dispute the notice, using either of the above dates of March 5, 2022 or March 22, 2022.

The tenant applied for more time to cancel the 10 Day Notice. However, section 66 of the *Act* does not allow me to extend the time to cancel the 10 Day Notice, if the tenant applies after the effective date of the notice. The tenant applied on April 6, 2022, which is after the corrected effective date on the 10 Day Notice of March 15, 2022.

I find that the tenant failed to pay the full rent due on March 1, 2022, within five days of receiving the 10 Day Notice. The tenant paid the full rent of \$700.00 on April 1, 2022, which is not within five days of March 5, 2022 or March 22, 2021.

In accordance with section 46(5) of the *Act*, the failure of the tenant to pay the full rent within five days led to the end of this tenancy on March 15, 2022, the corrected effective date on the 10 Day Notice. In this case, it required the tenant and anyone on the rental premises to vacate the premises by March 15, 2022. As this has not occurred and this date has long passed since this hearing occurred on July 28, 2022, I find that the landlord is entitled to a two (2) day Order of Possession, against the tenant, pursuant to section 55 of the *Act*. I find that the landlord's 10 Day Notice complies with section 52 of the *Act*.

I find that the landlord did not waive its right to enforce the 10 Day Notice by accepting full rent payments from the tenant after the corrected effective date of the notice. The landlord did not withdraw the 10 Day Notice and it continued to pursue an order of possession against the tenant at this hearing. The tenant filed a dispute of the 10 Day Notice in this application, and she did not cancel this hearing, so I find that the tenant was well aware that the landlord was pursuing an end to this tenancy.

Since I have granted an order of possession to the landlord based on the landlord's 10 Day Notice, I do not make any determination regarding the merits of the landlord's 1 Month Notice in this decision. Therefore, no testimony or evidence from the landlord, regarding the 1 Month Notice, was included in this decision.

Conclusion

The tenant's entire application is dismissed without leave to reapply.

I grant an Order of Possession to the landlord effective two (2) days after service on the tenant. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed 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: July 28, 2022

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Residential Tenancy Branch