



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

### **Dispute Codes**

File #910103839: CNR-MT, DRI, FFT

File #910103777: OPR-DR, MNR-DR, FFL

### **Introduction**

The Tenant seeks the following relief under the *Residential Tenancy Act* (the “Act”):

- an order pursuant to s. 46 cancelling a 10-Day Notice to End Tenancy signed on March 3, 2023 (the “10-Day Notice”) and an order pursuant to s. 66 for more time to do so;
- an order pursuant to s. 43 disputing a rent increase; and
- return of the filing fee pursuant to s. 72.

The Landlord files her own application seeking the following relief under the *Act*:

- an order of possession pursuant to s. 55 after issuing the 10-Day Notice;
- a monetary order pursuant to s. 67 for unpaid rent; and
- return of the filing fee pursuant to s. 72.

The Landlord’s application was filed as a direct request but was scheduled for a participatory hearing in light of the Tenant’s application.

K.K. appeared as the Landlord. The Tenant did not attend the hearing, nor did someone attend on their behalf.

The Landlord affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Landlord testifies that she served the Tenant with her application and evidence via registered mail sent on March 31, 2023. The Landlord provides a copy of a registered mail receipt dated March 31, 2023 as proof of service. I find that the Landlord served her application and evidence in accordance with s. 89 of the *Act*. Pursuant to s. 90 of the *Act*, I deem that the Tenant received the Landlord's application materials on April 5, 2023.

The Landlord advises that she did receive the Tenant's application, though says it was received late. Despite late service, I find that it is appropriate to proceed with the Tenant's application as the issues raised in it are directly related to those raised in the Landlord's application.

Pursuant to Rule 7.1 of the Rules of Procedure, the hearing began as scheduled in the Notice of Dispute Resolution. As the Tenant did not attend the hearing, it was conducted in their absence as permitted by Rule 7.3 of the Rules of Procedure and concluded at 1:25 PM without the Tenant's participation.

#### Preliminary Issue – Tenant's Claim Disputing a Rent Increase

Rule 6.6 of the Rules of Procedure sets out that applicant generally bear the onus of proving their claims except under certain circumstances, such as when a tenant files to dispute a notice to end tenancy. When this is the case, the onus of proving the claim rests with the respondent landlord.

In this instance, the Tenant bears the burden of proving his claim disputing a rent increase. I find Tenant has failed to this claim as he did not attend the hearing to present evidence in support of the claim. Accordingly, the Tenant's claim under s. 43 of the *Act* disputing a rent increase is dismissed without leave to reapply.

#### Issues to be Decided

- 1) Should the Tenant be permitted more time to dispute the 10-Day Notice? If so, is the 10-Day Notice enforceable?
- 2) Is the Landlord entitled to an order of possession?
- 3) Is the Landlord entitled to an order for unpaid rent?
- 4) Is either party entitled to their filing fee?

### Evidence and Analysis

The parties were given an opportunity to present evidence and make submissions. Rule 7.4 of the Rules of Procedure requires parties at the hearing to present the evidence they have submitted. I have reviewed the evidence referred to me and considered the oral submissions made at the hearing. Only the evidence relevant to the issues in dispute will be referenced in this decision.

The Landlord confirms that the Tenant came to live in the rental unit in October 2021 and is to pay \$1,400.00 in rent on the first of each month. I am provided with a copy of the tenancy agreement signed by the parties on October 25, 2021.

The Landlord advises that the 10-Day Notice was personally served on the Tenant on March 3, 2023. The Landlord's evidence includes proof of service to this effect as well as photographs of the 10-Day Notice being delivered to the Tenant. I find that the 10-Day Notice was served in accordance with s. 88 of the *Act* and received by the Tenant on March 3, 2023.

Pursuant to s. 46(1) of the *Act*, where a tenant fails to pay rent when it is due, a landlord may elect to end the tenancy by issuing a notice to end tenancy that is effective no sooner than 10-days after it is received by the tenant. Pursuant to s. 46(4) of the *Act*, a tenant has 5-days from receiving a 10-day notice to end tenancy to either pay the overdue rent or file an application to dispute the notice.

As per s. 46(2) of the *Act*, all notices issued under s. 46 must comply with the form and content requirements set by s. 52 of the *Act*. I have reviewed the 10-Day Notice provided to me and find that it complies with the formal requirements of s. 52 of the *Act*. It is signed and dated by the Landlord, states the address for the rental unit, states the correct effective date, sets out the grounds for ending the tenancy, and is in the approved form (RTB-30).

Review of the information on file shows that the Tenant filed his application on March 10, 2023. As the Tenant received the 10-Day Notice on March 3, 2023, I find that the Tenant failed to file his dispute within the 5 days permitted to him under s. 46(4) of the *Act*.

The Tenant files for more time to dispute the 10-Day Notice. Under s. 66 of the *Act*, the director may extend a time limit established under the *Act* only under exceptional

circumstances. The Tenant did not attend the hearing to explain what exceptional circumstances prevented him from filing on time such that a time extension is warranted. I find that the Tenant failed to demonstrate any exceptional circumstances. His application for more time to dispute the 10-Day Notice is dismissed without leave to reapply.

As the Tenant failed to file on time and as he failed to demonstrate a time extension is warranted under s. 66 of the *Act*, I find that s. 46(5) of the *Act* applies such that the Tenant is conclusively presumed to have accepted the end of the tenancy and ought to have vacated by its effective date. As the Tenant is conclusively presumed to have accepted the end of the tenancy, I dismiss his claim to cancel the 10-Day Notice without leave to reapply. I am advised by the Landlord that the Tenant continues to reside within the rental unit. Accordingly, I find that the Landlord is entitled to an order of possession under s. 55 of the *Act*, which shall be effective two days after the Tenant receives it.

Under s. 67 of the *Act*, the Director may order that a party compensate the other if damage or loss result from that party's failure to comply with the *Act*, the regulations, or the tenancy agreement.

The Landlord advises that the Tenant failed to pay rent in October 2022, November 2022, December 2022, and February 2023. The Landlord further advises that she and the Tenant had come to an arrangement that he was to pay \$1,700.00 per month for 6 months to pay off his arrears. The Landlord further states that the Tenant failed to make any of these payments as the cheques she had received from him were not honoured by the bank. Finally, the Landlord tells me that the Tenant paid \$1,400.00 in March 2023 and \$1,400.00 in April 2023.

I accept the Landlord's undisputed testimony that the Tenant failed to pay rent as alleged, namely that \$1,400.00 in rent is owed for the months of October 2022, November 2022, December 2022, and February 2023. I find that this is in breach of the tenancy agreement and s. 26 of the *Act*. I further find that the Landlord suffered loss of rental income as set out by her totalling \$5,600.00. I finally find that the Landlord could not have mitigated her damages under the circumstances as the Tenant continued to reside within the rental unit.

Accordingly, I find that the Landlord has established a monetary claim for unpaid rent totalling \$5,600.00.

### Conclusion

I dismiss the Tenant's claim under s. 43 of the *Act* disputing a rent increase without leave to reapply.

I dismiss the Tenant's claim under s. 66 of the *Act* for more time to dispute the 10-Day Notice without leave to reapply. As the Tenant failed to file his application within the time permitted by s. 46(4) of the *Act*, his application to cancel the 10-Day Notice is dismissed without leave to reapply.

I grant the Landlord an order of possession under s. 55 of the *Act*. The Tenant shall provide vacant possession of the rental unit to the Landlord within **two (2) days** of receiving the order of possession.

I grant the Landlord a monetary order for unpaid rent under s. 67 of the *Act* in the total amount of \$5,600.00.

I find that the Tenant was unsuccessful on his application and the Landlord was successful on her application. Accordingly, I grant the Landlord her filing fee and find the Tenant is not entitled to his. I dismiss the Tenant's claim under s. 72 of the *Act* is dismissed without leave to reapply. Pursuant to s. 72 of the *Act*, I order the Tenant pay the Landlord's \$100.00 filing fee.

Pursuant to ss. 67 and 72 of the *Act*, I order that the Tenant pay **\$5,700.00** to the Landlord (\$5,600.00 (unpaid rent) + \$100.00 (filing fee)).

It is the Landlord's obligation to serve these orders on the Tenant. If the Tenant does not comply with the monetary order, it may be filed by the Landlord with the Small Claims Division of the Provincial Court and enforced as an order of that Court. If the Tenant does not comply with the order of possession, it may be filed by the Landlord with the Supreme Court of British Columbia 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: April 20, 2023