



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      CNR, CNC, FFT

### Introduction

On December 9, 2022 the Tenant filed their Application at the Residential Tenancy Branch to dispute the One-Month Notice to End Tenancy for cause (the “One-Month Notice”) issued by their Landlord. They also applied for reimbursement of the Application filing fee.

The Tenant amended their Application on March 7, 2023 to dispute a 10-Day Notice to End Tenancy for Unpaid Rent (the “10-Day Notice”).

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on April 21, 2023. Both parties attended the teleconference hearing.

### Preliminary Matter – Participants’ service of documentation for this hearing

Though their receipt of the Notice of Dispute Resolution Proceeding from the Tenant was delayed, the Landlord acknowledged receiving this document that informed them of the Tenant’s Application. The Landlord stated they provided their evidence for this hearing to the Tenant directly in digital format on April 4, 2023. Though the Tenant couldn’t recall specifically receiving materials from the Landlord, they did not object; therefore, I find it more likely than not that the Landlord accomplished service of documents as required.

### Issue(s) to be Decided

Is the Tenant entitled to a cancellation of the 10-Day Notice?

If the Tenant is unsuccessful on this piece of their Application, is the Landlord entitled to an Order of Possession in line with the 10-Day Notice, pursuant to s. 55 of the *Act*?

Is the Tenant entitled to a cancellation of the One-Month Notice?

If the Tenant is unsuccessful on this piece of their Application, is the Landlord entitled to an Order of Possession of the rental unit, in line with the One-Month Notice, pursuant to s. 55 of the *Act*?

Is the Tenant entitled to reimbursement for the Application fee for their initial Application, pursuant to s. 72 of the *Act*?

### Background and Evidence

In this section I set out only the information and evidence that is relevant to the issues and my finding in this matter, with my decision set out in the Analysis section below.

The Landlord provided a copy of the tenancy agreement, signed by the parties on March 5, 2021 for the tenancy starting on April 1, 2021. The rent amount is \$1,600 per month, payable on the first of each month. In the hearing, the Landlord clarified that the amount of rent had increased to \$1,624 in 2023.

The Landlord provided images of rent receipts they issued to the Tenant for 2022 to 2023. One note is that stamped March 3, 2023, showing “cash \$1,000”.

The Landlord issued the 10-Day Notice on March 3, 2023 for rent in the amount of \$1,624 that was due on March 1, 2023. This set the end-of-tenancy date for March 15, 2023. In their amendment to the Application, the Tenant noted they received this document attached to the door of their rental unit. In the hearing, the Tenant clarified that they received the document on March 3, 2023.

In the hearing, the Landlord clarified that they received \$1,000 first from the Tenant on March 3. They then served the 10-Day Notice on that same date because of the shortfall. The Tenant then paid the remaining \$624 on March 17<sup>th</sup>, and this was deposited on March 22.

In the hearing the Tenant recalled they were “very, very late” paying rent in the month of March; however, they did pay that and did not miss rent.

### Analysis

I find the basic terms of the tenancy agreement are plain in the evidence. That is a rent amount of \$1,624 payable on the 1<sup>st</sup> of each month. The Tenant acknowledged the current rent amount of \$1,624 per month.

The *Act* s. 26 requires a tenant to pay rent when it is due under the tenancy agreement whether or not a landlord complies with the *Act*, the regulations or the tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the rent. The exact wording is:

- (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations of the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent.

The *Act* s. 46(1) provides authority for a landlord to issue a notice to end a tenancy “if rent is unpaid on any day after it is due”. A landlord may issue a notice to end the tenancy effective “on a date that is not earlier than 10 days after the date the tenant receives the notice.”

In this tenancy, the Landlord issued the 10-Day Notice on March 3, 2023. They attached it to the door of the rental unit on that same day. A timeline affecting the Tenant and their obligation to pay rent is set out on that 10-Day Notice document:

You have 5 days to pay rent . . . to the landlord or file an Application for Dispute Resolution with the Residential Tenancy Branch.

Because the Landlord attached the document to the door of the rental unit, it was considered “served” on the third day after it was attached, as set in the *Act* s. 90(c). The Tenant then had 5 days after March 6, 2023 to either apply to the Residential Tenancy Branch or pay the rent in full.

The Landlord stated that the Tenant then paid the remainder of the rent owing on March 17, 2023. I find this evidence shows the Tenant breached s. 26 by not paying the correct amount of rent when required. The Tenant stated they paid the rent for the month of March within March; however, this was not with attention to the timeline for doing so, and that constitutes a breach of the *Act*.

In sum, the Tenant had until March 11 to pay the rent in full, and they did not do so. I find the evidence shows the Tenant breached s. 26 of the *Act* by not paying the correct amount of rent when required. The Tenant did not have a right under the *Act* to deduct any part of, or all, of the rent amount.

I dismiss the Tenant’s Application amendment for cancellation of the March 2023 10-Day Notice.

Under s. 55 of the *Act*, when a tenant's application to cancel a notice to end tenancy is dismissed, and I am satisfied the document complies with the requirements under s. 52 regarding form and content, I must grant a landlord an order of possession. On my review, I find the 10-Day Notice complies with the requirements of form and content; therefore, the Landlord here is entitled to an Order of Possession. The tenancy will end with the Landlord's service of this Order of Possession.

The validity of the separate One-Month Notice issued by the Landlord in December 2022 is not at issue. I cancel that One-Month Notice and it is of no effect.

The Tenant was unsuccessful in this Application; therefore, I grant no reimbursement of the Application filing fee to them.

### Conclusion

For the reasons outlined above, I dismiss the Tenant's Application for cancellation of the 10-Day Notice, without leave to reapply. I dismiss the other grounds on their Application, without leave to reapply.

I grant an Order of Possession to the Landlord, effective 1:00pm on May 15, 2023. Should the Tenant fail to comply with this Order, the Landlord may file this Order with the Supreme Court of British Columbia where it may 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: April 26, 2023

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Residential Tenancy Branch