



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      CNR

### Introduction

The Tenant seeks an order pursuant to s. 46 of the *Residential Tenancy Act* (the “Act”) cancelling a 10-Day Notice to End Tenancy signed on January 26, 2023 (the “10-Day Notice”).

V.Y. appeared as the Landlord’s agent. The Tenant did not attend the hearing, nor did someone attend on their behalf.

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 11:10 AM without participation of the Tenant.

The Landlord’s agent 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’s agent advises that the Landlord was not served with the Tenant’s application or evidence, receiving notice instead by way of automated email from the Residential Tenancy Branch. I find the Tenant has failed to demonstrate service of his application. Despite this, I find it appropriate to proceed with the application as the Landlord did receive notice and was prepared to proceed despite the issue of service.

The Landlord’s agent further advises that the Landlord’s response evidence was served on the Tenant by having it posted to their door on April 12, 2023. I note that s. 89(1) of the *Act* applies under the circumstances such that the method of delivery, being posting

documents to a door, is not permitted given the application type. I find that the Landlord has failed to demonstrate service in accordance with the *Act*. Accordingly, I exclude the Landlord's evidence.

Despite overlapping issues of service, I include a copy of the tenancy agreement and the 10-Day Notice. Both parties have provided these documents to the Residential Tenancy Branch such that I am satisfied that these documents, at least, are in the possession both sides.

### Issues to be Decided

- 1) Is the 10-Day Notice enforceable?
- 2) If so, is the Landlord entitled to an order of possession and order for unpaid rent?

### Evidence and Analysis

The parties were given an opportunity to present evidence and make submissions. I have reviewed all included written and oral evidence provided to me by the parties and I have considered all applicable sections of the *Act*. However, only the evidence and issues relevant to the claims in dispute will be referenced in this decision.

The Landlord's agent confirmed the following details with respect to the tenancy:

- The Tenant moved into the rental unit on January 1, 2020.
- Rent of \$1,218.00 is due on the first of each month.
- A security deposit of \$600.00 was paid by the Tenant.

As mentioned above, I am provided with a copy of the tenancy agreement.

### *Enforceability of the 10-Day Notice*

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. If a tenant files to dispute the notice, the burden of proving it was issued in compliance with s. 46 of the *Act* rests with the respondent landlord.

The Landlord's agent advises, and I accept, that the 10-Day Notice was posted to the Tenant's door on January 26, 2023. I find that this was done in accordance with s. 88 of the *Act*. Pursuant to s. 90 of the *Act*, I deem that the Tenant received the 10-Day Notice on January 29, 2023.

Review of the information on file shows the Tenant filed their application on February 2, 2023. Accordingly, I find that the Tenant complied with s. 46(4) of the *Act* and filed their application within the 5 days of receiving the 10-Day Notice on January 29, 2023.

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, sets out the grounds for ending the tenancy, and is in the approved form (RTB-30). The effective date in the 10-Day Notice is incorrect, though I find this is automatically corrected by s. 53 of the *Act* to February 8, 2023.

I am advised by the Landlord's agent that the Landlord served the 10-Day Notice as the Tenant has not paid rent from September 2022 to date. Based on the undisputed testimony of the Landlord's agent, I find that the Landlord has established that the Tenant has failed to pay rent in accordance with the tenancy agreement. I find the 10-Day Notice was properly issued.

I dismiss the Tenant's application to cancel the 10-Day Notice without leave to reapply.

#### *Landlord's Entitlement to an Order of Possession*

Section 55(1) of the *Act* provides that where a tenant's application to cancel a notice to end tenancy is dismissed and the notice complies with s. 52, then I must grant the landlord an order for possession. As that is the case here, I find the Landlord is entitled to an order of possession, which shall be effective two days after it is received by the Tenant.

#### *Landlord's Entitlement to an Order for Unpaid Rent*

Section 55(1.1) of the *Act* provides that where a tenant's application to cancel a notice to end tenancy for unpaid rent is dismissed and the notice complies with the formal requirements of s. 52, then I must grant an order for unpaid rent. I accept the

undisputed testimony from the Landlord's agent and find that the Landlord is entitled to an order of unpaid rent totalling \$9,744.00 (\$1,218.00 x 8 months (Sept 2022 to April 2023)).

### Conclusion

I dismiss the Tenant's application cancelling the 10-Day Notice without leave to reapply.

I grant the Landlord an order of possession pursuant to s. 55(1) of the *Act*. The Tenant shall provide vacant possession of the rental unit to the Landlord within **two (2) days** of receiving the order.

I grant the Landlord an order for unpaid rent pursuant to s. 55(1.1) of the *Act*. I order that the Tenant pay **\$9,744.00** to the Landlord in unpaid rent.

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 24, 2023

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Residential Tenancy Branch