



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

Landlord: OPR MNR MNDC FF  
Tenant: CNR ERP OLC RP RR MNDC

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “*Act*”).

The Landlord’s Application for Dispute Resolution was made on January 29, 2019, and was amended on February 6, 2019 (the “Landlord’s Application”). The Landlord applied for the following relief, pursuant to the *Act*:

- an order of possession for unpaid rent or utilities;
- a monetary order for unpaid rent or utilities;
- a monetary order for money owed or compensation for damage or loss; and
- an order granting recovery of the filing fee.

The Tenant’s Application for Dispute Resolution was made on January 27, 2019 (the “Tenant’s Application”). The Tenant applied for the following relief, pursuant to the *Act*:

- an order cancelling a notice to end tenancy for unpaid rent or utilities;
- an order that the Landlord make emergency repairs for health or safety reasons;
- an order that the Landlord comply with the *Act*, regulation, and/or the tenancy agreement;
- an order that the Landlord make repairs to the unit, site, or property;
- an order reducing rent for repairs, services or facilities agreed upon but not provided; and
- a monetary order for money owed or compensation for damage or loss.

The Landlord and the Tenant attended the hearing at the appointed date and time, and each was assisted by an advocate. All in attendance provided affirmed testimony.

The Landlord's son testified the Landlord's Application package was served on the Tenant by registered mail. J.A. acknowledged receipt on behalf of the Tenant. Further, on behalf of the Tenant, J.A. testified the Tenant's Application package was served on the Landlord by registered mail. The Landlord's son acknowledged receipt on February 5, 2019. No issues were raised during the hearing with respect to service or receipt of these documents. The parties were in attendance and were prepared to proceed. Accordingly, pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were provided with the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Preliminary and Procedural Matters

The parties were advised that Rule 2.3 of the Rules of Procedure permits an arbitrator to exercise discretion to dismiss unrelated claims with or without leave to reapply. In these circumstances, I find it appropriate to exercise my discretion to sever certain aspects of the parties' applications. The most pressing issue to address is related to the payment of rent and whether or not the tenancy will continue. The parties are granted leave to reapply for the remainder of the relief sought at a later date, as appropriate.

#### Issues

1. Is the Landlord entitled to an order of possession?
2. Is the Landlord entitled to a monetary order for unpaid rent or utilities?
3. Is the Landlord entitled to recover the filing fee?
4. Is the Tenant entitled to an order cancelling the notice to end tenancy for unpaid rent or utilities?

### Background and Evidence

The parties agreed the tenancy commenced about 10 years ago, although neither party has a copy of the written tenancy agreement between them. They agreed that rent in the amount of \$637.50 per month is due on the first day of each month. The parties also agreed the Tenant paid a security deposit in the amount of \$375.00, which the Landlord holds.

The Landlord's son testified the Tenant did not pay rent when due on October 1, 2018, and has not paid any rent since. Accordingly, the Landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated January 15, 2019 (the "10 Day Notice"). The Tenant's Application confirms receipt of the 10 Day Notice on January 23, 2019. The 10 Day Notice indicates that \$2,550.00 was outstanding when it was issued. A copy of the 10 Day Notice was submitted into evidence. The Landlord testified further that the Tenant did not pay rent when due on February 1, 2019, and that rent in the amount of \$3,187.50 is currently outstanding.

The parties agreed the Landlord received payment in the form of a bank draft in the amount of \$3,187.50, which was provided to the Landlord with the Tenant's Application package on February 5, 2019. The Landlord's son testified the payment has not been deposited.

On behalf of the Tenant, J.A. testified that attempts were made to pay rent on January 27, 2019, when J.L. attended the Landlord's residence at 2:00 pm and 6:30 pm. J.A. advised that a statement by J.L. in support of the attempts was submitted into evidence. In addition, J.A. testified she sent a text message to the Landlord on January 27, 2019, requesting the Landlord's bank information so rent could be deposited. A copy of the text message was submitted into evidence.

In response, The Landlord's son stated the Landlord was unaware the Tenant had sent J.L. to pay rent, and that the Landlord was not contacted to be present when the payment was to be delivered. Although the Landlord's son acknowledged receipt of the text message from J.A., he testified that the Landlord was not prepared to give out banking information.

In addition, J.A. testified that the Landlord had established a pattern of collecting rent from the Tenant while in hospital. According to J.A., the Tenant was hospitalized due to the condition of the rental unit.

In response, the Landlord's son testified that the Landlord did not regularly collect rent while the Tenant was in hospital but that the Tenant's family members paid rent on his behalf.

Finally, J.A. testified that the Landlord's son agreed that rent was not due because of renovations that were planned in the rental unit. In support, J.A. referred to text messages from the Landlord's son, dated November 5 and 17, 2018, which suggest rent might not have been due if the Tenant's belongings were removed from the rental unit so renovations could occur.

In response, the Landlord's son testified that there were discussions about planned renovations but that it required the Tenant's belongings to be removed. He testified that not only have the Tenant's belongings not been removed, but that dog feces and garbage remain.

With respect to the condition of the rental unit, the Landlord's son testified that it was caused during the 10-year tenancy. He stated that dog feces and urine, and garbage, are the issue.

### Analysis

Based on all of the above, the evidence and unchallenged testimony, and on a balance of probabilities, I find as follows.

Section 26 of the *Act* confirms that a tenant must pay rent when due under a tenancy agreement, whether or not the 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.

Section 46 of the *Act* permits a landlord to take steps to end a tenancy when rent remains unpaid on any day after the day it is due by issuing a notice to end tenancy for unpaid rent. A tenant has five days after receipt of a notice to end tenancy for unpaid rent to pay the overdue rent or dispute the notice by making an application for dispute resolution. Failure to pay the overdue rent or dispute the notice results in the conclusive presumption that the tenancy ends on the effective date of the notice.

In this case, the Landlord testified that rent in the amount of \$3,187.50 is currently outstanding. On behalf of the Tenant, J.A. acknowledged rent has not been paid as claimed but provided several explanations in the evidence.

In this case, I find that rent was not paid when due. Further, I find the Tenant provided insufficient evidence to convince me that any attempts to pay outstanding rent were made until after the Tenant received the 10 Day Notice on January 23, 2019. At that time, rent had not been paid since October 1, 2018. Further, I find it is more likely than not that the Tenant could have made attempts, either personally or through his representative, to pay rent when due on October 1, November 1, and December 1, 2018, and on January 1, 2019. He testified that he was able to leave hospital and attend the rental unit on at least one occasion during his hospitalization. In addition, other methods for payment were available to him, such as an electronic fund transfer, which would have provided the Tenant with confirmation of the payment whether or not the Landlord deposited it.

With respect to the Tenant's efforts to pay outstanding rent after receiving the 10 Day Notice, I find it is more likely than not that the Landlord was not aware that J.L. attended his residence to pay rent. Indeed, the Landlord's son testified he was unaware of these efforts, and it appears that J.L. did not leave the payment at the Landlord's residence. In addition, I find it was reasonable for the Landlord to refuse to provide banking information to J.A. Further, I find there is insufficient evidence before me to confirm the Tenant was not obligated to pay rent due to renovations. Rather, it appears the preconditions for an abatement of rent were not met the discussions between the Landlord's son and J.A. As rent was not paid when due and remains outstanding, I find the Landlord is entitled to an order of possession, which will be effective two (2) days after service on the Tenant.

In addition, I find the Landlord has demonstrated an entitlement to a monetary award of \$3,187.50 for unpaid rent. Having been successful, I also grant the Landlord a monetary award in the amount of \$100.00 in recovery of the filing fee. In these circumstances, I also find it appropriate to apply the security deposit held in partial satisfaction of the Landlord's claim.

Pursuant to section 67 of the *Act*, I grant the Landlord a monetary order in the amount of \$2,912.50, which has been calculated as follows:

<b>Claim</b>	<b>Amount allowed</b>
Unpaid rent:	\$3,187.50
Filing fee:	\$100.00
<i>LESS</i> security deposit:	(\$375.00)
<b>TOTAL:</b>	<b>\$2,912.50</b>

The Tenant's Application to cancel the 10 Day Notice is dismissed, without leave to reapply. The Tenant is granted leave to reapply for the remainder of the relief sought at a later date, as appropriate.

### Conclusion

The Tenant's Application to cancel the 10 Day Notice is dismissed, without leave to reapply. The Tenant is granted leave to reapply for the remainder of the relief sought at a later date, as appropriate.

The Landlord is granted an order of possession, which will be effective two (2) days after service on the Tenant. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Landlord is granted a monetary order in the amount of \$2,912.50. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: February 26, 2019

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Residential Tenancy Branch