



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PREMIER INVESTMENTS CORPORATION  
and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes**

Landlord: OPR MNR FF  
Tenant: CNR RP MNDC FF

### **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 June 10, 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; and
- an order granting recovery of the filing fee.

The Tenant’s Application for Dispute Resolution was made on June 4, 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 repairs to the unit, site or property;
- an order for compensation for monetary loss or other money owed; and
- an order granting recovery of the filing fee.

The Landlord was represented at the hearing by E.S., an agent. The Tenant attended the hearing. Both E.S. and the Tenant provided affirmed testimony.

On behalf of the Landlord, E.S. testified the Landlord’s Application package was served on the Tenant by registered mail. The Tenant acknowledged receipt.

The Tenant testified the Tenant’s Application package was served on the Landlord by registered mail. On behalf of the Landlord, E.S. acknowledged receipt. The Tenant also served a documentary evidence package on the Landlord by leaving a copy at the Landlord’s office on July 8, 2019. E.S. acknowledged it was received on that date but suggested that the deemed service provisions under the *Act* should apply because it was left attached to the door.

However, I find that the documentary evidence was served on and received by the Landlord on July 8, 2019, and that the deemed service provisions of the *Act* do not apply. This finding does not impact the outcome of the decision.

No further issues were raised regarding service of the above documents. The parties were represented or were in attendance and were prepared to proceed. 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. The most pressing issues to address are related to the payment of rent and whether or not the tenancy will continue. Therefore, I find it appropriate to exercise my discretion to address the Landlord's Application in full, and to sever all but the Tenant's request for an order cancelling the notice to end tenancy. The Tenant is 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?
5. Is the Tenant entitled to an order granting recovery of the filing fee?

Background and Evidence

A copy of the tenancy agreement between the parties was submitted into evidence. It confirmed the fixed-term tenancy began on November 1, 2018, and was expected to continue to October 31, 2019. Rent in the amount of \$4,500.00 per month is due on the first day of each month. Despite what is indicated in the tenancy agreement, E.S. confirmed the Tenant paid a security deposit in the amount of \$3,150.00, which the Landlord holds.

On behalf of the Landlord, E.S. testified the Tenant did not pay rent in full on June 1, 2019. Accordingly, the Landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice"). The Tenant's Application confirms receipt of the 10 Day Notice. A copy of the 10 Day Notice was submitted into evidence. At that time, rent in the amount of \$3,349.77 was outstanding.

Further, E.S. testified that the Tenant also did not pay rent in full on July 1, 2019. The Tenant paid only \$2,166.37 at that time, leaving a further \$2,333.63 outstanding. Currently, rent totaling \$5,683.40 remains unpaid (\$3,349.77 + \$2,333.63).

In reply, the Tenant confirmed rent has not been paid as claimed. However, the Tenant testified that this was justified because the Landlord was not responding to requests for repairs.

### 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. Section 46(4) of the *Act* confirms a tenant has five days after receipt of a notice to end tenancy to pay the overdue rent or dispute the notice by making an application for dispute resolution. Section 46(5) of the *Act*, confirms that 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, I find the Tenant did not pay rent in full on June 1 and July 1, 2019, and that \$5,683.40 remains outstanding. Despite the Tenant's claim that rent was withheld because the Landlord did not respond to repair requests, I am not satisfied that the Tenant had a right under the *Act* to deduct all or a portion of rent. Therefore, 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 is entitled to a monetary order in the amount of \$5,683.40 for unpaid rent. Having been successful, I also find the Landlord is entitled to recover the \$100.00 filing fee paid to make the Landlord's Application. In the circumstances, I find it is also appropriate to order that the Landlord may retain the security deposit paid by the Tenant in partial satisfaction of the Landlord's claim.

Pursuant to section 67 of the *Act*, the Landlord is granted a monetary order in the amount of \$2,633.40, which has been calculated as follows:

<b>Claim</b>	<b>Amount awarded</b>
Unpaid rent:	\$5,683.40
Filing fee:	\$100.00
<i>LESS</i> security deposit:	(\$3,150.00)
<b>TOTAL:</b>	<b>\$2,633.40</b>

The Tenant's Application to cancel the 10 Day Notice is dismissed, without leave to reapply. As the tenancy is ending, the Tenant's request for an order that the Landlord make repairs to the rental unit is also dismissed, without leave to reapply. However, 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. As the tenancy is ending, the Tenant's request for an order that the Landlord make repairs to the rental unit is also dismissed, without leave to reapply. However, 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 \$2,633.40. 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: July 23, 2019

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Residential Tenancy Branch