



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      Tenant: CNR OLC MNDC FF  
Landlord: OPR MNR MNDC FF

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on March 25, 2022. Both parties applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the “Act”).

### *Tenant’s Application*

The Landlords attended the hearing. However, the Tenant did not. The hearing was by telephone conference and began promptly, as scheduled, at 11:00 AM Pacific Time on March 25, 2022, as per the Notice of a Dispute Resolution Hearing provided to the Tenant. The line remained open while the phone system was monitored for 10 minutes and the only participant who called into the hearing during this time was the Landlords who were ready to proceed. The Landlords testified that the Tenant continues to reside in the rental unit.

After the ten minute waiting period, the Tenant’s application was **dismissed in full, without leave to reapply**.

Section 55 of the *Act* applies and states:

### **Order of possession for the landlord**

- 55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if
- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

**(1.1) If an application referred to in subsection (1) is in relation to a landlord's notice to end a tenancy under section 46 [landlord's notice: non-payment of rent], and the circumstances referred to in subsection (1) (a) and (b) of this section apply, the director must grant an order requiring the payment of the unpaid rent.**

[My emphasis added]

Under section 55 of the *Act*, when a Tenant's application to cancel a notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52, I must grant the Landlord an order of possession. Section 52 of the *Act* requires that any notice to end tenancy issued by a landlord must be signed and dated by the landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

I find the 10 Day Notice issued on December 3, 2021, complies with section 52 of the *Act*, in terms of the form and content requirements. As such, I find the Landlord is entitled to an order of possession, pursuant to section 55 of the *Act*. This order will be effective 2 days after it is served on the Tenant.

Next, I turn to section 55 (1.1) of the *Act*, which specifies that I must grant a monetary order for outstanding unpaid rent, provided a valid 10 Day Notice was issued, and if the Tenant's application to cancel the 10 Day Notice is dismissed. This issue will be addressed further below.

### *Landlords' Application*

The Landlords stated that they served the Tenant with the Notice of Dispute Resolution Proceeding by registered mail on February 3, 2022. Proof of mailing was provided. Pursuant to section 89 and 90 of the *Act*, I find the Tenant is deemed to have received this package 5 days after it was sent.

The Landlords stated they sent their evidence package and amendment to the Tenant on March 3, 2022, by registered mail. Proof of mailing was provided. Pursuant to

section 89 and 90 of the Act, I find the Tenant is deemed to have received this package on March 8, 2022, the fifth day after it was mailed.

I note the amendment that was submitted was to include accrued rent and strata fines that the Tenant has accumulated.

The Landlord was provided 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. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary and Procedural Matters

The Landlords applied for multiple remedies under the *Act*, a number of which were not sufficiently related to one another.

Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After looking at the list of issues before me, I determined that the most pressing and related issues in the Landlords' application deal with whether or not the tenancy is ending due to unpaid rent and whether or not the Landlord is entitled to a monetary order for the amount identified on the 10-Day Notice. As a result, I exercised my discretion to dismiss, with leave to reapply, all of the grounds on the Landlords' application, with the exception of the following grounds:

- an order of possession based on a 10-Day Notice for unpaid rent or utilities (10 Day Notice); and,
- a monetary order for unpaid rent or utilities.

The Landlords' application to recover strata fines is dismissed, with leave to reapply.

### Issue(s) to be Decided

- Are the Landlords entitled to a monetary order for unpaid rent or utilities?

### Background and Evidence

The Landlords testified that rent in the amount of \$2,350.00 is due on the first of each month. The Landlords hold a security deposit in the amount of \$1,150.00.

The 10 Day Notice issued on December 3, 2021, was provided into evidence, and states that \$2,350.00 was due, and unpaid, as of December 1, 2021. The Landlord stated that the Tenants have not paid any rent since that 10 Day Notice was issued, and the Tenant now owes \$2,350.00 x 4 for December 2021 through March 2022.

### Analysis

Based on the unchallenged affirmed testimony and documentary evidence, and on a balance of probabilities, I find as follows:

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent.

I find there is insufficient evidence the Tenant had any right under the *Act* to withhold rent. I find there is sufficient evidence from the Landlord's testimony to demonstrate that the Tenant owes and has failed to pay \$9,400.00 in rent for December 2021 through March 2022.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Landlords were substantially successful in this hearing, I order the tenant to repay the \$100. Also, pursuant to sections 72 of the *Act*, I authorize that the security deposit, currently held by the Landlords, be kept and used to offset the amount of rent still owed by the Tenant. In summary, I grant the monetary order based on the following:

| <b>Claim</b>                                | <b>Amount</b> |
|---|---------------|
| Cumulative unpaid rent as above             | \$9,400.00    |
| Other:                                      |               |
| Filing fee                                  | \$100.00      |
| <b>Less:</b>                                |               |
| Security Deposit currently held by Landlord | (\$1,150.00)  |

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|               |                   |
|---------------|-------------------|
| <b>TOTAL:</b> | <b>\$8,350.00</b> |
|---------------|-------------------|

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Conclusion

Pursuant to section 55 of the Act, the Landlord is granted an order of possession effective **two days after service** on the Tenant. This order must be served on the Tenant. If the Tenant fails to comply with this order the Landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

The Landlord is granted a monetary order pursuant to Section 67 in the amount of **\$8,350.00**. This order must be served on the Tenant. If the Tenant fails to comply with this order the Landlord may file the order in the Provincial Court (Small Claims) and 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: March 25, 2022

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Residential Tenancy Branch