



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CAPILANO PROPERTY MANAGEMENT SERVICES  
LTD. and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNR-DR, OPR-DR, FFL

### Introduction

This hearing convened as a result of the landlord's application for dispute resolution seeking remedy under the Residential Tenancy Act (Act) for:

- an order of possession of the rental unit pursuant to a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (Notice) issued to the tenant; and
- a monetary order for unpaid rent; and
- to recover the cost of the filing fee.

This dispute began as an application via the ex-parte Direct Request process and was adjourned to a participatory hearing based on the Interim Decision by an adjudicator with the Residential Tenancy Branch (RTB), dated December 30, 2021, which should be read in conjunction with this decision.

At the participatory hearing, the landlord's agent (landlord) attended the teleconference hearing. The tenant did not attend the hearing. For this reason, service of the Notice of a Dispute Resolution Hearing (Notice of Hearing), application and documentary evidence was considered.

The landlord testified that the tenant was served the Notice of Reconvened Hearing, the interim decision, and all other required documents by registered mail on January 2, 2022. The landlord filed the Canada Post receipt showing the tracking number as proof of service and further, the landlord said that the tracking information showed the tenants collected the registered mail on January 16, 2022.

Based on the landlord's testimony and evidence, I find the tenant was sufficiently served under the Act and the hearing proceeded in the tenant's absence.

During the hearing the landlord was given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

### Issue(s) to be Decided

Is the landlord entitled to an order of possession of the rental unit due to unpaid monthly rent, to monetary compensation for unpaid rent, and to recover the cost of the filing fee?

### Background and Evidence

During the hearing, the landlord confirmed that the tenant vacated the rental unit on March 4, 2022. The landlord explained the parties signed a mutual agreement to end the tenancy on February 28, 2022; however, the tenants ultimately said they could not vacate by the date, and stayed until March 4, 2022. Filed in evidence was a copy of the mutual agreement.

The landlord said that the landlord still wanted an order of possession of the rental unit to have on file.

The landlord confirmed that the tenant had paid the monthly rent in full in December 2021, and January and February 2022, and did not currently owe any monthly rent.

The landlord also said that they had new tenants scheduled to move into the rental unit on March 1, 2022, but they could not as the tenants had not vacated the rental unit by then. The landlord submitted that the new tenants did not move into the rental unit until March 15, 2022, as their move-in date was pushed back.

The landlord said they would like monetary compensation for the tenants overholding in the rental unit beyond the date they agreed to vacate. The landlord submitted that they requested loss of rent either through March 4 or March 14, 2022.

### Analysis

After reviewing the relevant evidence, I provide the following findings, based upon a balance of probabilities:

As the tenant vacated on March 4, 2022, and due to new tenants moving into the rental unit on March 15, 2022, I decline to issue the landlord an order of possession of the rental unit as I find this matter is now moot.

As to the landlord's request for monetary compensation, I find the claim listed on the application is for unpaid monthly rent. The landlord confirmed that the tenant paid the monthly rent until through February 2022, and any claim by the landlord would be a monetary loss due to the tenant overholding, in other words, a loss of rent revenue and not unpaid rent. The tenancy officially ended on February 28, 2022, per the terms of their mutual agreement, per section 44 (1) (c) of the Act.

The tenant would not be aware of a monetary claim for any reasons other than for unpaid rent.

For this reason, I decline to award the landlord compensation for a loss of rent revenue. However, the landlord may file another application for dispute resolution seeking any losses from the tenant.

For the reasons above, I dismiss the landlord's application for an order of possession and a monetary order for unpaid rent, without leave to reapply. As I have not considered the merits of the landlord's application, I decline to award them recovery of the filing fee.

### Conclusion

The landlord's application is dismissed, without leave to reapply, as the tenancy has already ended and due to the tenant having paid the monthly rent through the end of the tenancy, or officially, February 28, 2022.

The landlord is at liberty to make another application for loss of rent revenue.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: April 02, 2022

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Residential Tenancy Branch