



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** Landlord: MNR-DR, OPR-DR, FFL  
Tenant: CNR

### **Introduction**

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlord requested:

- an Order of Possession for non-payment of rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant requested:

- cancellation of the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46.

The landlord attended the hearing with an interpreter and their agent, CH. CH testified on behalf of the landlord in this hearing. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing. Both parties confirmed that they understood.

Both parties confirmed receipt of each other’s applications for dispute resolution hearing package (“Applications”) and evidence. In accordance with sections 88 and 89 of the *Act*, I find that both the landlords and tenant were duly served with the Applications and evidence.

The landlord provided undisputed testimony that the tenant was personally served with the 10 Day Notice dated January 4, 2022, with an effective date of January 17, 2022, on

January 5, 2022. In accordance with section 88 of the *Act*, I find that the tenant duly served with the 10 Day Notice dated January 4, 2022.

Although the landlord had applied for a Monetary Order of \$3,186.00 in their initial claim, since they applied another \$2,568.00 in rent has become owing that was not included in the original application. RTB Rules of Procedure 4.2 allows for amendments to be made in circumstances where the amendment can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made. On this basis, I have accepted the landlord's request to amend their original application from \$3,186.00 to \$5,754.00 to reflect the unpaid rent that became owing by the time this hearing was convened.

**Issue(s) to be Decided**

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession for unpaid rent?

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to recover the filing fee for this application from the tenant?

**Background and Evidence**

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

At the outset of the hearing, the terms of this tenancy were confirmed with both parties. Both parties confirmed that the tenant rents a room, which contains a bathroom and kitchenette. The tenant has been renting the room since September 30, 2021. The landlord provided a written tenancy agreement which notes that rent is set at \$40.80 per day. The landlord's agent testified that the tenant has been residing there for some time, and acknowledges that this matter does qualify as a tenancy under the Residential Tenancy Act.

The tenant testified that monthly rent is set at \$1,284.00, payable on the first of every month. No security deposit was paid for this tenancy.

The tenant acknowledged that they were served with a 10 Day Notice to End Tenancy on January 5, 2022 after facing funding issues as they were dealing with an insurance claim related to a house fire. The tenant does not dispute that they have failed to pay

the outstanding rent, but testified that they required more time to make the payments, or find new housing.

The landlord testified that the tenant has not made any payments since the issuance of the 10 Day Notice, and they are requesting a monetary order for the unpaid rent, as well as an Order of Possession.

### **Analysis**

**Section 26** of the Act, in part, states as follows:

#### **Rules about payment and non-payment of rent**

**26** (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The tenant does not dispute the fact that the outstanding rent was not paid within five days of being served the 10 Day Notice. The tenant filed an application pursuant to section 46(4) of the *Act*, within the required time period to cancel the 10 Day Notice, stating that they were having issues with their funding following an insurance claim.

It is undisputed that the tenant has not paid the outstanding rent for this tenancy, and has failed to pay any rent since the 10 Day Notice was served. Although the tenant provided an explanation for why they have been unable to pay, the tenant is required to pay rent in accordance with the tenancy agreement and the *Act*. I find that the tenant had failed to pay the outstanding rent as required by the *Act*, and in accordance with the terms of the agreement between the parties, and accordingly I dismiss the tenant's application to cancel the 10 Day Notice. I find that the 10 Day Notice issued by the landlord is valid, and complies with section 52 of the *Act*.

I find that the landlords are entitled to a two (2) day Order of Possession against the tenant, pursuant to section 55 of the *Act*. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

The tenant does not dispute that they have not paid the outstanding rent for this tenancy. The tenant did not have the right under the *Act*, or an order by an Arbitrator to

withhold any portion of the rent. I, therefore, grant the landlord's application for \$5,754.00 in unpaid rent.

As the landlord was successful in their application, I allow the landlord to recover the \$100.00 filing fee for their application.

**Conclusion**

I dismiss the tenant's application to cancel the landlord's 10 Day Notice. I find that the landlord's 1 Month Notice is valid and effective as of January 17, 2022. I, therefore, grant an Order of Possession to the landlord effective two **days after service of this Order** on the tenant. Should the tenant and any occupant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia

The landlord will also be provided with a Monetary Order in the amount of \$5,854.00. The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court 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 07, 2022

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Residential Tenancy Branch