



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

Tenant: CNR

Landlord: OPU-DR, MNU-DR, FFL

### Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear two crossed applications regarding a residential tenancy dispute.

The Tenant applied on January 28, 2022 for:

- an order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated January 25, 2022 (the 10 Day Notice).

The Landlord applied on February 7, 2022 for:

- an order of possession, having issued the 10 Day Notice;
- a monetary order for unpaid rent, having issued the 10 Day Notice; and
- the filing fee.

The hearing began promptly at 11:00 a.m., and was attended by the Landlord, but not the Tenant. The Landlord was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; he was made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

The Landlord testified that his Notice of Dispute Resolution Proceeding and evidence was served on the Tenant on February 15, 2022 by registered mail, and provided a tracking number, as noted on the cover page of this decision. Based on the Landlord's testimony, and having checked the tracking number, I find the Landlord's documents served on the Tenant on February 15, 2022, in accordance with section 89 of the Act, and deem the documents received by the Tenant on February 20, 2022, in accordance with section 90.

### Preliminary Matter

As the Tenant did not attend the hearing, I dismiss his application.

### Issues to be Decided

- 1) Is the Landlord entitled to an order of possession?
- 2) Is the Landlord entitled to a monetary order for unpaid rent?
- 3) Is the Landlord entitled to the filing fee?

### Background and Evidence

The Landlord provided the following particulars regarding the tenancy. It began September 1, 2019; rent is \$1,850.00, due on the first of the month; and the Tenant did not pay a security deposit.

A copy of the signed tenancy agreement and shared utility agreement are submitted as evidence.

A copy of the 10 Day Notice is submitted as evidence. The Landlord testified that the Notice was served on the Tenant in person on January 26, 2022. The Landlord submitted a proof of service form, signed by a witness, indicating that the Notice was served as described.

The 10 Day Notice is signed and dated by the Landlord, gives the address of the rental unit, states an effective date, states the reason for ending the tenancy, and is in the approved form. The 10 Day Notice indicates the tenancy is ending because the Tenant failed to pay rent in the amount of \$13,600.00, due on December 1, 2021, and utilities in the amount of \$491.27, following written demand on September 8, 2021. The Notice indicates that December 1, 2021 is the date the Tenant defaulted on the repayment plan.

A demand letter dated September 8, 2021 is submitted as evidence. It states that the Tenant owes \$491.27 for utilities for January–August 2021.

The Landlord testified that the parties signed a repayment agreement after the Tenant fell behind on rent and utilities. The Landlord testified that he had wanted to give the Tenant time to catch up on the outstanding payments, but that the Tenant stopped making payments and stopped communicating with the Landlord.

A copy of the signed repayment agreement is submitted as evidence, as is a monthly breakdown of the rent and utility amounts indicated on the 10 Day Notice, as follows:

<b>Monthly Breakdown of Rent on the 10 Day Notice to End Tenancy</b>				
<b>Month and date rent was due</b>	<b>Rent amount owing</b>	<b>Amount of partial payment(s) received</b>	<b>Date of partial payment(s)</b>	<b>Balance rent owed</b>
Jan. 1, 2021	\$1,850	\$0	N/A	\$1,850
Feb. 1, 2021	\$1,850	\$0	N/A	\$1,850
Mar. 1, 2021	\$1,850	\$0	N/A	\$1,850
Apr. 1, 2021	\$1,850	\$0	N/A	\$1,850
May 1, 2021	\$1,850	\$850	May 25, 2021	\$1,000
Jun. 1, 2021	\$1,850	\$1850	Jun. 4, 2021	\$0
Jul. 1, 2021	\$1,850	\$0	N/A	\$1,850
Aug. 1, 2021	\$1,850	\$1850	Aug. 22, 2021	\$0
Sep. 1, 2021	\$1,850	\$1850	N/A	\$1,850
Oct. 1, 2021	\$1,850	\$1000 \$1250	Oct. 12, 2021 Oct. 14, 2021	-\$400
Nov. 1, 2021	\$1,850	\$2250	Nov. 18, 2021	-\$400
Dec. 1, 2021	\$1,850	\$900	Dec. 22, 2021	\$950
Jan. 1, 2021	\$1,850	\$500	Jan. 12, 2021	\$1,350
<b>Total Balance Rent Owing</b>				<b>\$13,600</b>

The Landlord confirmed that the year in the dates listed in the second last line above, January 1, 2021 and January 12, 2021, should have been 2022.

<b>Breakdown of Utilities on the 10 Day Notice to End Tenancy</b>				
<b>Date of written demand (attach copy)</b>	<b>Utility amount</b>	<b>Amount of partial payment(s) received</b>	<b>Date of partial payment(s)</b>	<b>Balance utilities owed</b>
Sep. 8, 2021	\$491.28	\$0	N/A	\$491.27
<b>Month Breakdown</b>				
January, 2021	\$72.72	\$0	N/A	\$72.72
February, 2021	\$93.48	\$0	N/A	\$93.48
March, 2021	\$60.97	\$0	N/A	\$60.97
April, 2021	\$87.66	\$0	N/A	\$87.66
May, 2021	\$28.51	\$0	N/A	\$28.51

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June, 2021	\$68.66	\$0	N/A	\$68.66
July, 2021	\$17.00	\$0	N/A	\$17.00
August, 2021	\$62.30	\$0	N/A	\$62.30
<b>Total Balance Utilities Owing</b>				<b>\$491.27</b>

The Landlord testified that the January 12, 2022 payment of \$500.00 in rent was the last payment made by the Tenant.

The Landlord testified that though the Tenant did not pay rent for February, March, or April 2022, the Landlord is not seeking rent for February or March 2022, as a pipe burst in January 2022, resulting in the Tenant having no water for 6 weeks.

The Landlord testified he is seeking rent in the amount of \$1,850.00 for April 2022.

In accordance with section 64(3)(c), I amend the Landlord's application to include the outstanding rent for April 2022.

### Analysis

Pursuant to section 46(1) of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice. A notice under this section must comply with the form and content provisions of section 52.

Section 46(6) states:

(6) If

- (a) a tenancy agreement requires the tenant to pay utility charges to the landlord, and
- (b) the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them,

the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

Based on the Landlord's affirmed undisputed testimony and documentary evidence, I find the Landlord served the 10 Day Notice on the Tenant in person on January 26, 2022, in accordance with section 88 of the Act, and that the Notice was received by the Tenant on the same day.

I find the 10 Day Notice meets the form and content provisions of section 52 of the Act as it is signed and dated by the Landlord, gives the address of the rental unit, states an effective date, states the reason for ending the tenancy, and is in the approved form.

Based on the Landlord's affirmed undisputed testimony, and clear and complete documentary evidence, I find the T did not pay rent and utilities in accordance with the Act and the tenancy agreement.

Therefore, I find the Landlord is entitled to an order of possession.

The 10 Day Notice indicated that rent in the amount of \$13,600.00 was due on December 1, 2021, but in the hearing the Landlord confirmed the \$13,600.00 included the unpaid rent due January 1, 2022. I accept that the date of December 1, 2021 on the Notice was an error.

Based on the Landlord's affirmed testimony and undisputed evidence, I find the Tenant owes unpaid rent in the amount of \$13,600.00 from January 1, 2021 to January 1, 2022, as summarized by the table provided by the Landlord; and that the Tenant owes rent in the amount of \$1,850.00 for April 2022. The Landlord indicated the Tenant is not required to pay rent for February or March 2022. Therefore, the Tenant owes \$15,450.00 (\$13,600.00 + \$1,850.00) in outstanding rent, which he must pay the Landlord, pursuant to section 55(4) of the Act.

Based on the Landlord's affirmed testimony and undisputed evidence, I find the Tenant owes unpaid utilities for in the amount of \$491.27, which he must pay the Landlord, pursuant to section 55(4) of the Act.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord is successful in his application, I order the Tenant to pay the \$100.00 filing fee the Landlord paid to apply for dispute resolution.

Therefore, I find the Landlord is entitled to a monetary order for \$16,041.27, as follows:

Unpaid rent	\$15,450.00
Unpaid utilities	\$491.27
Filing fee	\$100.00
<b>Total</b>	<b>\$16,041.27</b>

### Conclusion

The Landlord is granted an order of possession which will be effective two days after it is served on the Tenant. The order of possession must be served on the Tenant. The order of possession may be filed and enforced as an order of the Supreme Court of British Columbia.

The Landlord is granted a monetary order in the amount of \$16,041.27. The monetary order must be served on the Tenant. 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: May 18, 2022

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Residential Tenancy Branch