



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR

### Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (“Ten Day Notice”) pursuant to section 46

The tenant attended. The agents WA and KS attended on behalf of the landlord (“the landlord”), All parties had opportunity to provide affirmed testimony, present evidence and make submissions. The hearing process was explained. No issues of service were raised. I find each party served the other in compliance with the Act.

### Recording

The parties were cautioned that recordings of the hearing were not permitted pursuant to Rule 6.11 of the *Residential Tenancy Branch Rules*. Both parties confirmed their understanding of the requirement and further confirmed they were not making recordings of the hearing.

### Delivery of Decision

Each party confirmed their email address to which a copy of the Decision will be sent.

### Preliminary Issue 1

I informed the parties that in the event I dismissed the tenant's application to cancel the Notice and found that it was issued in compliance with the *Act*, I was required under section 55 of the *Act* to grant an order of possession in favour of the landlord. Section 55 states as follows:

*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.*

The landlord requested an Order of Possession.

Preliminary Issue # 3

The landlord requested a Monetary Order for outstanding rent in the amount of \$2,659.53. The tenant agreed he currently owed outstanding rent in this amount.

The landlord requested authorization to apply the security deposit of \$375.00 to the monetary award. The tenant acknowledged he had provided a security deposit in this amount which the landlord held.

The landlord clarified their claim for a monetary award as follows:

ITEM	AMOUNT
Outstanding rent	\$2,659.53
(Less security deposit)	(\$375.00)
<b>TOTAL MONETARY ORDER</b>	<b>\$2,284.53</b>

Issue(s) to be Decided

Is the tenant entitled to cancelation of the 10 Day Notice?

Is the landlord entitled to an Order of Possession and a Monetary Order for unpaid rent with credit for the security deposit, balance requested being **\$2,284.53**.

### Background and Evidence

### Background and Evidence

The parties agreed as follows. The tenancy began on December 1, 2015 and the tenant resides in the unit. Rent is \$886.51 payable on the 1st of the month. At the beginning of the tenancy, the tenant provided a security deposit a balance of which in the amount of \$375.00 which the landlord holds. A copy of the tenancy agreement was submitted.

The parties agreed the landlord issued a 10 Day Notice for unpaid rent dated April 4, 2022 served by posting to the tenant's door that day thereby effecting service 3 days later, April 7, 2022. The effective date of the Notice was April 14, 2022, corrected to April 17, 2022. The landlord submitted a copy of the 10 Day Notice in the standard RTB form. The tenant acknowledged receipt of the 10 Day Notice as described by the landlord.

The tenant applied to dispute the Notice on April 6, 2022. Since the issuance of the Notice, the tenant has made some payment on rent which was accepted by the landlord for use and occupancy only. The parties agreed three months' rent in the amount of \$2,659.53 remains owing.

The tenant acknowledged the accuracy of the landlord's statements. The tenant requested more time to pay the outstanding rent. The landlord denied the request.

The landlord submitted a copy of the tenant's ledger and copies of several previous 10 Day Notice's.

The landlord requested a Monetary Order as follows:

ITEM	AMOUNT
Outstanding rent	\$2,659.53
(Less security deposit)	(\$375.00)
<b>TOTAL MONETARY ORDER</b>	<b>\$2,284.53</b>

The landlord requested an immediate Order of Possession.

### Analysis

I have considered all the submissions and evidence presented to me, including those provided in writing and orally. I will only refer to certain aspects of the submissions and evidence in my findings.

I find the tenant, as acknowledged, was served with the 10 Day Notice on effective April 7, 2022 in accordance with the *Act*. I find the form and content of the Ten-Day Notice complies with section 52 of the *Act*.

I accept the landlord's testimony and supporting evidence with which the tenant agreed and find the tenant owes \$2,659.53 in outstanding rent.

I find that the tenant acknowledged that they owed the rent and intended to pay. I find the tenant has no credible or valid dispute to the landlord's application.

A tenant is required to pay rent when it is due. Based upon the evidence and testimony, I find the landlord has met the burden of proof on a balance of probabilities that the tenant owes \$2,659.53 the landlord for outstanding rent as claimed. The tenant's explanation for why they did not pay rent is not justification under the *Act* for failure to pay.

Accordingly, I find the tenant is in breach of section 26 of the *Act* by not paying the amount claimed by the landlord in accordance with the tenancy agreement.

Therefore, I dismiss the tenant's application to cancel the 10 Day Notice.

Pursuant to section 55(1), as I have found the Notice complies with section 52 and I have dismissed the tenant's application, I must grant the landlord an Order of Possession.

Thus, I find that the landlord is entitled to an Order of Possession pursuant to section 55 of the *Act*, effective two days after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

I grant the landlord authorization under section 72 to apply the security deposit to the Monetary Order.

I grant a Monetary Order to the landlord as follows:

ITEM	AMOUNT
Outstanding rent	\$2,659.53
(Less security deposit)	(\$375.00)
<b>TOTAL MONETARY ORDER</b>	<b>\$2,284.53</b>

### Conclusion

I grant an **Order of Possession** to the landlord effective **two days** after service of this Order on the tenant. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia

I grant a monetary order to the landlord in the amount of **\$2,284.53**.

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 29, 2022

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Residential Tenancy Branch