



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR-MT

### Introduction

This hearing dealt with the Tenant's application under the *Residential Tenancy Act* (the "Act") for:

- cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent dated March 4, 2022 (the "10 Day Notice") pursuant to section 46; and
- more time to dispute the 10 Day Notice pursuant to section 66.

The Landlord's agent AH attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, and to make submissions.

The Tenant did not attend this hearing. I left the teleconference hearing connection open until 1:40 pm in order to enable the Tenant to call into the hearing scheduled to start at 1:30 pm. I confirmed that the correct call-in numbers and participant access code had been provided in the notice of dispute resolution proceeding. I used the teleconference system to confirm that AH and I were the only ones who had called into the hearing.

I advised AH that the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure") prohibit unauthorized recordings of dispute resolution hearings. AH confirmed he was not recording this dispute resolution hearing.

AH testified the Tenant did not serve the Landlord with the notice of dispute resolution proceeding package. Records indicate that the Landlord called the Residential Tenancy Branch on March 30, 2022 and was provided with the information to attend this hearing.

### Preliminary Matter – Correction of Dispute Address

AH confirmed that the dispute address as listed on the Tenant's application was missing the unit number for the rental unit. Based on AH's testimony, I amended this application to correct the dispute address.

### Preliminary Matter – Tenancy Has Ended

AH testified that the Tenant vacated the rental unit on April 2, 2022.

Based on AH's testimony, I find the Tenant's claims to dispute the 10 Day Notice and to seek more time for disputing the 10 Day Notice to be moot. I also find that it will not be necessary for me to consider whether the Landlord's is entitled to an Order of Possession pursuant to section 55(1) of the Act. I find the remaining issue on this application is whether the Landlord is entitled to a Monetary Order for unpaid rent pursuant to section 55(1.1) of the Act.

### Preliminary Matter – Tenant's Non-attendance

Rule 7.3 of the Rules of Procedure states:

#### **7.3 Consequences of not attending the hearing**

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

As the Tenant did not attend this hearing by 1:40 pm, I directed that the hearing be conducted in the absence of the Tenant.

### Issue to be Decided

Is the Landlord entitled to a Monetary Order for unpaid rent?

### Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony presented, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of this application and my findings are set out below.

The parties entered into a written tenancy agreement for a fixed term of 1 year starting on June 1, 2020. Rent was \$1,950.00, due on the first day of each month. The Tenant paid a security deposit of \$975 which is held by the Landlord.

A copy of the 10 Day Notice has been submitted into evidence. The 10 Day Notice is dated March 4, 2022 and has an effective date of March 15, 2022. The 10 Day Notice states that the Tenant failed to rent of \$1,950.00 due on March 1, 2022.

AH confirmed that a copy of the 10 Day Notice was posted to the Tenant's door on March 4, 2022.

AH testified that the Tenant vacated the rental unit on April 2, 2022.

AH confirmed the Tenant did not pay any rent for the period between March 1, 2022 and April 2, 2022.

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

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

If a tenant does not pay rent when due, section 46 of the Act permits a landlord to take steps to end a tenancy by issuing a notice to end tenancy for unpaid rent.

Based on AH's testimony that the 10 Day Notice was posted to the door on March 4, 2022, I find the Tenant was served with the 10 Day Notice in accordance with section 88(g) of the Act. Pursuant to section 90(c) of the Act, I find the Tenant is deemed to have received the 10 Day Notice on March 7, 2022.

Section 46(4)(b) of the Act permits a tenant to dispute a 10 day notice to end tenancy for non-payment within 5 days of receiving such notice. Therefore, the Tenant had until March 12, 2022 to dispute the 10 Day Notice. Records show that the Tenant submitted this application late on March 13, 2022. Section 66(2) of the Act describes the conditions under which the director may extend the time limit established by section 46(4)(b).

Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, Rule 6.6 of the Rules of Procedure places the onus on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

Based on AH's testimony, I am satisfied on a balance of probabilities that the Tenant did not pay rent due on March 1, 2022. I find that the Landlord has established the grounds for issuing the 10 Day Notice. Accordingly, I uphold the 10 Day Notice and dismiss the Tenant's application without leave to re-apply.

Pursuant to section 55(1.1) of the Act, the director must grant an order requiring the payment of unpaid rent when the notice to end tenancy complies with section 52 of the Act and the director dismisses the tenant's application to dispute the notice or upholds the notice.

Section 52 of the Act states:

**Form and content of notice to end tenancy**

- 52 In order to be effective, a notice to end a tenancy must be in writing and must
- (a) be signed and dated by the landlord or tenant giving the notice,
  - (b) give the address of the rental unit,
  - (c) state the effective date of the notice,
  - (d) except for a notice under section 45(1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy,
    - (d.1) for a notice under section 45.1 *[tenant's notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 *[confirmation of eligibility]*, and
  - (e) when given by a landlord, be in the approved form.

In this case, I have reviewed a copy of the 10 Day Notice and find that it complies with the requirements of section 52 in form and content.

Accordingly, I find that the Landlord is entitled to an order for unpaid rent under section 55(1.1).

I note Tenant applied to dispute the 10 Day Notice but moved out of the rental unit before the hearing. I find, based on AH's testimony, that the Tenant left the rental unit on April 2, 2022 without paying any rent for the period from March 1, 2022 to April 2, 2022. Pursuant to section 68(2) of the Act, and for the purpose of calculating the amount of rent owing by the Tenant, I order that the parties' tenancy ended on April 2, 2022.

Pursuant to section 55(1.1) of the Act, I award the Landlord \$2,080.00 in unpaid rent for the period from March 1, 2022 to April 2, 2022, calculated as  $\$1,950.00 + \$1,950.00 \times 2/30 \text{ days} = \$2,080.00$ .

Pursuant to section 72(2)(b) of the Act, I order that the Landlord is authorized to retain the \$975.00 security deposit held by the Landlord in partial satisfaction of the total sum awarded in this hearing.

The Monetary Order granted to the Landlord for the balance of the amount awarded is calculated as follows:

Item	Amount
March 2022 Rent	\$1,950.00
April 2022 Rent (pro-rated to April 2, 2022)	\$130.00
Less Security Deposit	- \$975.00
<b>Total Monetary Order for Landlord</b>	<b>\$1,105.00</b>

### Conclusion

The Tenant's application is dismissed without leave to re-apply.

The Landlord is authorized to deduct the full amount of the Tenant's \$975.00 security deposit in partial satisfaction of the sum awarded in this application.

Pursuant to sections 55(1.1) of the Act, I grant the Landlord a Monetary Order in the amount of \$1,105.00. 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: July 6, 2022

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Residential Tenancy Branch