



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      Landlord: OPR MNR FF  
Tenant: CNR MNRT

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on July 7, 2022. Both parties applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the “Act”).

### *Tenant’s Application*

The Landlords attended the hearing. However, the Tenant did not. The hearing was by telephone conference and began promptly, as scheduled, at 9:30 AM Pacific Time on July 7, 2022, as per the Notice of a Dispute Resolution Hearing provided to the Tenant. The line remained open while the phone system was monitored for 30 minutes and the only participant who called into the hearing during this time was the Landlords who were ready to proceed. The Landlords testified that the Tenant vacated the rental unit on July 4, 2022. The Landlords stated that they received a text message from the Tenant, out of the blue, stating that he is leaving the Province, and that the few items he left behind at the rental unit were items he did not have the time to take to the landfill.

Since the Tenant did not attend the hearing, his application is **dismissed in full, without leave to reapply**.

Section 55 of the *Act* applies and states:

### **Order of possession for the landlord**

**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.

**(1.1) If an application referred to in subsection (1) is in relation to a landlord's notice to end a tenancy under section 46 [landlord's notice: non-payment of rent], and the circumstances referred to in subsection (1) (a) and (b) of this section apply, the director must grant an order requiring the payment of the unpaid rent.**

[My emphasis added]

Under section 55 of the *Act*, when a Tenant's application to cancel a notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52, I must grant the Landlord an order of possession. Section 52 of the *Act* requires that any notice to end tenancy issued by a landlord must be signed and dated by the landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

I find the 10 Day Notice issued on January 2, 2022, complies with section 52 of the *Act*, in terms of the form and content requirements. As such, I find the Landlord is entitled to an order of possession, pursuant to section 55 of the *Act*. However, this Order is not necessary, since the Tenant vacated the rental unit 3 days ago. I decline to issue an order of possession, as that issue is moot.

Next, I turn to section 55 (1.1) of the *Act*, which specifies that I must grant a monetary order for outstanding unpaid rent, provided a valid 10 Day Notice was issued, and if the Tenant's application to cancel the 10 Day Notice is dismissed. This means the only remaining issue for this application is what amount of rent is owed. This will be addressed further below, as it also relates to the Landlord's cross application (for an order of possession, and for a monetary order for unpaid rent).

### *Landlord's Application*

The Landlords stated that they served the Tenant with the Notice of Dispute Resolution Proceeding and evidence by registered mail on June 2, 2022. Proof of mailing was

provided into evidence at the hearing. Pursuant to section 89 and 90 of the Act, I find the Tenant is deemed to have received this package 5 days after it was sent.

The Landlord was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Issue(s) to be Decided

- Is the Landlord entitled to a monetary order for unpaid rent or utilities?

#### Background and Evidence

The Landlord testified that monthly rent is set at \$1,821.90. The Landlord holds a security deposit in the amount of \$875.00. The Landlords stated that after not paying rent for a couple months, the Tenant texted them suddenly on July 4, 2022, stating that he had vacated the rental unit that day and that he was leaving the province. The Tenant stated that he had left some things behind in the rental unit, but only did so because he did not have time or capacity to take them to the Landfill. The Tenant also noted in his text message that he did not complete the painting he had intended to.

The Landlords stated that the Tenant started falling behind on rent in May 2022, and has also fallen behind on the utility bills he owes. More specifically, the Landlords stated that the Tenant only paid \$460.64 towards May rent, and still owes \$1,361.26 for May. The Landlords also stated that the Tenant failed to pay any rent for June or July. The Landlords pointed out that the Tenant failed to give any Notice that he would be leaving, and he left behind items which need to be cleaned up.

The Landlords stated that the Tenant is also responsible for 80% of the utility bills. However, some of these bills were not received until after the hearing was filed, and the Landlords did not provide copies of all the bills. As such, they stated they are only seeking the unpaid rent at this time.

#### Analysis

Based on the unchallenged affirmed testimony and documentary evidence, and on a balance of probabilities, I find as follows:

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent.

In this case, I allow the Landlords to amend this application to collect on rent that has accrued since the application was made. However, I will not consider any utility amounts, as the Landlord stated they did not wish to pursue these amounts, and the bills were not provided. The Landlords have leave to re-apply for any utility bills should they wish.

Overall, I find there is insufficient evidence the Tenant had any right under the *Act* to withhold rent. I find there is sufficient evidence from the Landlord's testimony to demonstrate that the Tenant owes and has failed to pay \$1,361.26 for May 2022, and \$1,821.90 for June 2022. With respect to July rent, I find the Tenant breached section 45(1) of the *Act* by failing to give at least one month's advance notice that he would be moving out, and he also left behind debris and garbage which makes it difficult to re-rent the unit right away. I find the Tenant is liable for July rent, in full, and I also award \$1,821.90 for July 2022.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Landlord was substantially successful in this hearing, I order the tenant to repay the \$100. Also, pursuant to sections 72 of the *Act*, I authorize that the security deposit, currently held by the Landlord, be kept and used to offset the amount of rent still owed by the Tenant. In summary, I grant the monetary order based on the following:

<b>Claim</b>	<b>Amount</b>
Cumulative unpaid rent as above	\$5,005.06
Other:	
Filing fee	\$100.00
<b>Less:</b>	
Security Deposit currently held by Landlord	(\$875.00)
<b>TOTAL:</b>	<b>\$4,230.06</b>

Conclusion

The Landlord is granted a monetary order pursuant to Section 67 in the amount of **\$4,230.06**. This order must be served on the Tenant. If the Tenant fails to comply with this order the Landlord may file the order in the Provincial Court (Small Claims) and be 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 07, 2022

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Residential Tenancy Branch