



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

Tenant: CNR  
Landlord: OPR-DR, MNR-DR, FFL

### **Introduction**

On May 5, 2022 the Tenant applied for dispute resolution for an order cancelling the 10-Day Notice to End Tenancy Issued for Unpaid Rent or Utilities (the “10-Day Notice”) issued by the Landlord on April 29, 2022.

On May 26, 2022 the Landlord applied for an order of possession of the rental unit, and a monetary order for rent not paid, and reimbursement of the Application filing fee. The Landlord’s application here was filed initially as a Direct Request, for the second 10-Day Notice they issued on May 10, 2022. The matter proceeded by way of participatory hearing because this Direct Request application cannot be considered by that method when there is was an application by the Tenant previously in place.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on September 27, 2022. The Landlord attended the telephone conference call hearing; the Tenant did not attend. I find the Landlord notified the Tenant in due course via registered mail, information for which appeared in the Landlord’s evidence.

### **Preliminary Matter – Tenant’s attendance**

The Tenant’s Application of May 5, 2022 was the first filed in the matter of this tenancy. The Tenant did not attend the hearing, although I left the teleconference hearing open until 9:52am to enable them to call in to this teleconference hearing scheduled for 9:30. I confirmed the correct call-in numbers and participant codes were provided in the

Notice of Hearing generated when the Tenant applied. I also confirmed throughout the duration of the call that the Tenant was not in attendance.

Rule 7.3 of the *Residential Tenancy Branch Rules of Procedure* provides that if a party or their agent fails to attend the hearing, the arbitrator may conduct the hearing in the absence of that party or dismiss the application without leave to reapply. On this basis, I dismiss the Tenant's application for cancellation of the April 29, 2022 10-Day Notice. This is without leave to reapply on this issue.

### Background and Evidence

The Landlord advised they issued and served a separate 10-Day Notice to the Tenant on May 10, 2022. This was for continued unpaid rent and set the final move-out date as May 21, 2022. The Landlord provided a record of their service of this 10-Day Notice to the Tenant with registered mail. The Landlord advised the Tenant was still overholding in the rental unit.

The Tenant did not amend their Application of May 5 2022 to incorporate this subsequent 10-Day Notice from the Landlord. By s. 90(a), the 10-Day Notice was deemed served to the tenant on May 15, 2022. I accept the undisputed evidence before me that the Tenant failed to pay the rent owed in full by May 15, 2022, within the five days granted under s. 46(4) of the *Act*. Moreover, the Tenant did not dispute the 10-Day Notice within that five-day period.

### Analysis

Based on the foregoing, I find that the Tenant is conclusively presumed under s. 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 10-Day Notice, May 21, 2022.

On my review of the document, that 10-Day Notice contains the necessary elements for it to be effective; therefore, it complies with s. 52. In line with this, I grant an Order of Possession to the Landlord to which they are legally entitled as per s. 55(4) of the *Act*.

As the landlord is successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

The *Act* allows for the Landlord to recover rent in the situation where a tenant's application to cancel a 10-Day Notice is dismissed.

The Landlord provided evidence, backed with their testimony, of the following rent amounts owing by the Tenant:

<b>Rent due date</b>	<b>Rent amount</b>	<b>Amount paid</b>	<b>Outstanding</b>
October 1, 2021	\$1,350	\$675	\$675
November 1, 2021	\$1,350	\$1,000	\$350
December 1, 2021	\$1,350	\$800	\$550
February 1, 2022	\$1,350	\$675	\$675*
April 1, 2022	\$1,350	\$0	\$1,350**
May 1, 2022	\$1,350	\$0	\$1,350
June 1, 2022	\$1,350	\$0	\$1,350
July 1, 2022	\$1,350		\$1,350
August 1, 2022	\$1,350	\$0	\$1,350
September 1, 2022	\$1,350	\$0	\$1,350
<b>TOTAL:</b>			<b>\$8,750</b>

\*noting that the Tenant paid \$2,350 on January 3 and January 21, 2022.

\*\*noting that the Tenant paid \$1,950 on March 17 and March 22, 2022.

Based on the evidence from their Application materials, and the Landlord's testimony in the hearing, I grant the Landlord a monetary award for rent amounts owing. This is unpaid rent as set out above, in accordance with s. 55(1.1) of the *Act*.

As the landlord is successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

The *Act* s. 72(2) gives an arbitrator the authority to make a deduction from the security deposit held by a landlord. Here, the Landlord has established a claim of \$8,850. After setting off the remainder of the security deposit held by the Landlord – the amount of \$650 -- there is a balance of \$8,200. I am authorizing the Landlord to keep the security deposit amount and award the balance of \$8,200 as compensation for the rent amounts owing.

### Conclusion

In the absence of the Tenant, I dismiss their application in its entirety and without leave to re-apply.

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.

Pursuant to s. 55(1.1) of the *Act*, I grant the Landlord a Monetary Order for the recovery of the amounts claimed. This amount is \$8,200. 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 s. 9.1(1) of the *Act*.

Dated: September 27, 2022

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Residential Tenancy Branch