



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

|                      |           |                     |
|----------------------|-----------|---------------------|
| <u>Dispute Codes</u> | Landlord: | OPR-DR, MNR-DR, FFL |
|                      | Tenant:   | CNR, FFT            |

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the Residential Tenancy Act (the Act).

The Landlord's Application for Dispute Resolution was made on August 7, 2022. The Landlord applied for the following relief, pursuant to the Act:

- an order of possession for unpaid rent;
- a monetary order for unpaid rent or utilities; and
- an order granting recovery of the filing fee.

The Tenant's Application for Dispute Resolution was made on July 30, 2022. The Tenant applied for the following relief, pursuant to the Act:

- an order cancelling a notice to end tenancy for unpaid rent; and
- an order granting recovery of the filing fee.

The Landlord attended the hearing at the appointed date and time and provided affirmed testimony. The Tenant did not attend the hearing. Accordingly, I order that the Tenant's application is dismissed without leave to reapply.

The Landlord testified the Notice of Dispute Resolution Proceeding package was served on the Tenant by registered mail on August 26, 2022. A photograph depicting an envelope addressed to the Tenant and Canada Post registered mail receipts was submitted in support. Pursuant to sections 89 and 90 of the Act, documents served by registered mail are deemed to be received five days later. Therefore, I find the Tenant is

deemed to have received the Landlord's application package on August 31, 2022, five days after it was mailed.

The Landlord was given an 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, and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues

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 recover the filing fee?

### Background and Evidence

The Landlord testified the tenancy began on March 31, 2018. Rent of \$1,600.00 per month is due on the last day of each month for the following month. The Tenant paid a security deposit in the amount of \$800.00 and a pet damage deposit of \$800.00, which the Landlord holds. A copy of the tenancy agreement was submitted into evidence.

The Landlord testified the Tenant did not pay rent when due. Accordingly, the Landlord issued a 10 Day Notice for Unpaid Rent or Utilities dated July 30, 2022, for unpaid rent of \$3,200.00 (the 10 Day Notice). The Landlord testified the 10 Day Notice was served on the Tenant in person on July 30, 2022. The Landlord submitted a photograph depicting service, and the Tenant's application acknowledges receipt on that date.

A copy of the 10 Day Notice was submitted into evidence. It is signed and dated by the Landlord, gives the address of the rental unit, states the effective date, states the grounds for ending the tenancy, and is in the approved form

The Landlord testified that the 10 Day Notice was issued because the Tenant did not pay rent when due on November 30, 2020 and June 30, 2022. In support, the Landlord submitted screen shots showing e-transfer payments made during this period. The Landlord also testified he did not receive rent when due on July 31 and August 31, 2022, and that rent totalling \$6,400.00 remains outstanding (\$1,600.00 x 4 months).

Further, the Landlord testified that he has not heard from the Tenant since the 10 Day Notice was served and has not received the keys to the rental unit.

As noted above, the Tenant did not attend the hearing to dispute the Landlord's evidence.

### Analysis

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

Section 26(1) of the Act confirms:

A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Section 46 of the Act confirms a landlord may take steps to 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.

In this case, I find that the 10 Day Notice was served on and received by the Tenant on July 30, 2022. I also find that the 10 Day Notice complies with the form and content requirements of section 52 of the Act.

Further, I find the Tenant did not pay rent when due and that \$6,400.00 remains outstanding. Therefore, I find the Landlord has established an entitlement to an order of possession which will be effective two days after it is served on the Tenant. I also find the Landlord has established an entitlement to a monetary award of \$6,400.00 for unpaid rent.

Having been successful, I find the Landlord is also entitled to recover the \$100.00 filing fee paid to make the Landlord's application. I also find it is appropriate in the circumstance to order that the Landlord is authorized to retain the security deposit and pet damage deposit in partial satisfaction of the claim.

Pursuant to section 67 of the Act, I grant the Landlord a monetary order in the amount of \$4,900.00, which has been calculated as follows:

| <b>Claim</b>                    | <b>Allowed</b>    |
|---------------------------------|-------------------|
| Unpaid rent:                    | \$6,400.00        |
| Filing fee:                     | \$100.00          |
| <i>LESS</i> security deposit:   | (\$800.00)        |
| <i>LESS</i> pet damage deposit: | (\$800.00)        |
| <b>TOTAL:</b>                   | <b>\$4,900.00</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 may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Landlord is granted a monetary order in the amount of \$4,900.00. 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: September 29, 2022

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Residential Tenancy Branch