



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlord requested:

- an Order of Possession for non-payment of rent and utilities pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The tenant requested:

- cancellation of the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing by the attending parties. Both parties confirmed that they understood.

Both parties confirmed receipt of each other’s applications for dispute resolution hearing package (“Applications”) and evidence. In accordance with sections 88 and 89 of the *Act*, I find that both the landlord and tenant were duly served with the Applications and evidence.

The landlord provided undisputed testimony that the tenant was served the 10 Day Notice dated May 16, 2022, which was posted on the tenant's door. In accordance with sections 88 and 90 of the *Act*, I find that the tenant deemed served with the 10 Day Notice on May 19, 2022, 3 days after posting.

Although the landlords had applied for a monetary Order of \$1,875.00 in their initial claim, since they applied another \$7,837.75 in rent has become owing that was not included in the original application. RTB Rules of Procedure 4.2 allows for amendments to be made in circumstances where the amendment can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made. On this basis, I have accepted the landlord's request to amend their original application from \$1,875.00 to \$9,712.75 to reflect the unpaid rent that became owing by the time this hearing was convened

Issue(s) to be Decided

Should the landlord's 10 Day Notice be cancelled pursuant to section 46 of the *Act*? If not is the landlord entitled to an Order of Possession for unpaid rent pursuant to section 55 of the *Act*?

Is the landlord entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Is the landlord entitled to recover his filing fee for this application pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began on August 15, 2019. Monthly rent was \$1,950.00, until the rent was increased to \$2,004.25 effective July 15, 2022. The rent is payable on the 15th day of each month. The landlord still holds the security and pet damage deposits of \$975.00 each deposit.

The landlord served the tenant with a 10 Day Notice for Unpaid rent on May 16, 2022 for failing to pay the May 2022 rent by May 15, 2022. The landlord testified that the tenant has only made one payment of \$200.00 since the 10 Day Notice was served,

and has not paid any rent since. The landlord is requested a monetary order for unpaid rent, an Order of Possession dated October 14, 2022, and recovery of the filing fee. The landlord provided the breakdown of the unpaid rent in the hearing as summarized in the table below:

Item	Amount
Outstanding May rent	\$1,750.00
Outstanding June rent	1,950.00
Outstanding July rent	2,004.25
Outstanding August rent	2,004.25
Outstanding September rent	2,004.25
Total Monetary Order Requested	\$9,712.75

The tenant does not dispute that they owe the above rent, but requested that the 10 Day Notice be cancelled on compassionate grounds. The tenant testified that they have been unable to work due to health issues, and the landlord had refused to accommodate the tenant with a repayment plan.

Analysis

Section 26 of the Act, in part, states as follows:

Rules about payment and non-payment of rent

26 (1) 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.

Based on the testimony of the landlord and the tenant, I find that the tenant was served with the Notice to End Tenancy, and I find that the 10 Day Notice does comply with the form and content provisions of section 52 of the *Act*, which states that the Notice 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, and (e) when given by a landlord, be in the approved form.

Although I am sympathetic towards the tenant's situation, the tenant does not dispute that only \$200.00 has been paid since May 16, 2022. The tenant is now \$9,712.75 in arrears for unpaid rent. The landlord is not obligated to provide the tenant with a repayment plan for this unpaid rent. I do not find that the tenant had the right to withhold

or deduct any portion of the rent. Accordingly, I find that the 10 Day Notice to End Tenancy is valid. I dismiss the tenant's application to cancel the 10 Day Notice without leave to reapply. As the effective date of the 10 Day Notice has passed, the landlord is granted an Order of Possession for October 14, 2022.

The tenant does not dispute that they owe \$9,712.75 in unpaid rent. Accordingly, I am allowing the landlord a Monetary Order to recover this amount. As the landlord was successful in their application, I allow the landlord to recover the filing fee. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's security and pet damage deposits in partial satisfaction of the monetary awards.

Conclusion

The tenant's application is dismissed without leave to reapply.

The landlord's application is allowed. I grant an Order of Possession to the landlord effective **October 14, 2022**. The landlord is provided with this Order, which must be served 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 issue a \$7,862.75 Monetary Order in favour of the landlord under the following terms:

Item	Amount
Outstanding May rent	\$1,750.00
Outstanding June rent	1,950.00
Outstanding July rent	2,004.25
Outstanding August rent	2,004.25
Outstanding September rent	2,004.25
Recovery of Filing fee	100.00
Less deposits held	-1,950.00
Total Monetary Order	\$ 7,862.75

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: October 06, 2022

Residential Tenancy Branch