



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding REMAX COMMERCIAL SOLUTIONS (AGENT)  
and [tenant name suppressed to protect privacy]

## DECISION

### Dispute Codes

For the landlord: OPR-DR MNR-DR FFL  
For the tenant: CNR

### Introduction

This hearing was convened as a result an Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) by both parties. The landlord applied for an order of possession for unpaid rent or utilities, for a monetary order unpaid rent or utilities, and to recover the cost of the filing fee. The tenant applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated August 16, 2022 (10 Day Notice). The tenant's filing fee was waived.

Attending the teleconference hearing were the landlord agent, GM (agent) and the landlord's counsel, AE (counsel). Counsel's assistant, MB (assistant) also attended the but was not affirmed as they were observing only in this matter. The agent was affirmed but not counsel, as counsel confirmed that they have been called to the BC Bar and as such, has already sworn an oath.

The tenant did not attend the hearing. As the tenant did not attend the hearing to present the merits of their application, the tenant's application was **dismissed, without leave to reapply**, after the 10-minute waiting period had elapsed pursuant to Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rules 7.1 and 7.3. The hearing continued with consideration of the landlord's application.

Counsel stated that they were not aware of the tenant's application as they were not served with the tenant's application prior to the hearing. Counsel was informed that the tenant would not be given leave to reapply as they are beyond the effective vacancy date of the 10 Day Notice.

The agent and counsel were given an opportunity to ask questions about the hearing process and in general. Thereafter the agent gave affirmed testimony and counsel made submissions. The agent and counsel were provided the opportunity to present their relevant evidence orally and in documentary form prior to the hearing and make submissions to me. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Regarding service of documents, the agent testified that they served the tenant with Notice of Dispute Resolution Hearing dated September 16, 2022 (Notice of Hearing, application and documentary evidence (Hearing Package) by registered mail at the rental unit address on September 16, 2022 and that they are unsure whether the tenant continues to occupy the rental unit as of the date of this hearing, November 29, 2022. Given the above, the landlord continues to seek an order of possession and unpaid rent and the filing fee. I have reviewed the tracking number submitted in evidence, which has been included on the cover page of this decision for ease of reference. According to the online Canada Post registered mail tracking website, the tenant failed to pick up the registered mail package and it was marked “unclaimed” and returned to the landlord sender. Section 90 of the Act indicates that document served by registered mail are deemed served 5 days after they are mailed. As a result of the above, I find the tenant was deemed served on September 22, 2022, which is 5 days after the Hearing Package was mailed.

I have reviewed all evidence before me that met the requirements of the RTB Rules. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

#### Preliminary and Procedural Matters

Although counsel requested to include December 2022 loss of rent in this application, the agent and counsel were advised that since it was not yet December 1, 2022, I would not amend the application as rent is not yet due for December 2022. Counsel and the agent were informed that they would be at liberty to apply for December 2022 loss of rent at the same time they make an application for damages if either are necessary.

In addition, counsel confirmed their email address. The tenant’s email address for service was confirmed by counsel and the agent. Counsel made a request that the landlord be authorized to serve the tenant going forward, which I grant pursuant to section 62(3) of the Act, as the tenant provided their email address in their application, which has been included on the cover page of this decision.

Counsel submits that at the time of the hearing, the landlord's claim for unpaid rent has increased from \$1,188.58 before the filing fee is added to \$3,991.04 in rent arrears prior to the filing fee being added. As a result, I find that doing so does not prejudice the respondent tenant as the tenant would be aware **or ought to be aware** that rent is due pursuant to the tenancy agreement. Therefore, I amend the application pursuant to section 64(3)(c) of the Act, from \$1,188.58 to \$3,991.04, before the filing fee.

#### Issues to be Decided

- Is the landlord entitled to an order of possession under the Act?
- Is the landlord entitled to a monetary order under the Act, and if so, in what amount?
- Is the landlord entitled to the recovery of the cost of the filing fee under the Act?

#### Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on January 1, 2020, and converted to a month-to-month tenancy after December 31, 2021. The monthly rent is \$985 per month and is due on the first day of each month. According to the tenant ledger submitted by the landlord, monthly rent was increased to \$999.78 as of February 1, 2022.

Counsel submits that as of the date of the hearing, the total amount of rent arrears before the filing fee is \$3,991.04.

The agent testified that the 10 Day Notice was posted to the tenant's door on August 19, 2022, and had an effective vacancy date of August 29, 2022. As the tenant has not returned the rental unit keys and confirmed that they have vacated the rental unit, the landlord continues to seek an order of possession. The 10 Day Notice is signed and dated and was fully completed by the landlord agent.

Although the tenant applied to dispute the 10 Day Notice, the tenant failed to attend the hearing to present the merits of their application and as a result, the tenant's application was dismissed without leave to reapply.

#### Analysis

Based on the undisputed testimony of the agent, the undisputed submissions of counsel and the undisputed documentary evidence before me, and on the balance of probabilities, I find the following.

**Order of possession** – Pursuant to section 55(1) as I have dismissed the tenant's application and find that the 10 Day Notice complies with section 52 of the Act, I must grant the landlord an order of possession. Section 53 of the Act automatically corrects the effective vacancy date from August 29, 2022 to September 1, 2022, as the 10 Day Notice was posted to the door and section 90 of the Act deems that documents are served 3 days after they are posted to the rental unit door. **Therefore, I find the tenancy ended on September 1, 2022**, which was the corrected effective vacancy date. **I grant the landlord an order of possession effective two (2) days after service on the tenant.**

**Monetary claim** – I accept the agent's undisputed testimony and the undisputed submission by counsel that the tenant may continue to occupy the rental unit as they tenant has not confirmed they vacated the rental unit and has not returned the rental unit keys. I also accept the tenant owes a total of **\$3,991.04** in rent arrears. Therefore, I find the tenant breached section 26 of the Act that requires that rent be paid on the first day of each month.

As the landlord's application is fully successful, I grant the landlord the **\$100** filing fee pursuant to section 72 of the Act for a total amount owing by the tenant to the landlord of **\$4,091.04**.

In addition to the above, I find the 10 Day Notice was undisputed by the tenant as the tenant failed to attend the hearing to dispute the 10 Day Notice and may continue to occupy the rental unit.

The landlord confirmed they do not wish to offset any amount owed with the security deposit, so I will not offset that amount.

I grant the landlord a monetary order pursuant to section 67 of the Act, for the amount owing by the tenant to the landlord in the amount of **\$4,091.04**. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

**I caution** the tenant not to breach section 26 of the Act in the future.

## Conclusion

The tenant's application was dismissed in full, without leave to reapply as the tenant did not attend the hearing to present the merits of their application.

The landlord's application is fully successful. The tenancy ended on September 1, 2022. The landlord has been granted an order of possession effective two (2) days after service on the tenant. Should the landlord require enforcement of the order of possession, the landlord must first serve the tenant with the order of possession. This order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

The landlord has established a total monetary claim of \$4,091.04 and has been granted a monetary order in that amount. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. A demand for payment must be included when serving the monetary order on the tenant.

I caution the tenant that they can be held liable for all costs related to enforcing the order of possession and monetary order, including but not limited to court fees and bailiff costs. This decision will be emailed to both parties. The orders will be emailed to the landlord only for service on the tenant as required. I have ordered that the landlord may serve the tenant by email as indicated above pursuant to section 62(3) of the Act.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: November 29, 2022

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Residential Tenancy Branch