



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding DEVONSHIRE PROPERTIES  
INC and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      **OPR-DR, MNR-DR, FFL**

### **Introduction**

This hearing dealt with the Landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

1. An Order of Possession for a 10 Day Notice to End Tenancy For Unpaid Rent or Utilities (the "10 Day Notice") pursuant to Sections 46, 55 and 62 of the Act;
2. A Monetary Order to recover money for unpaid rent pursuant to Sections 26, 46 and 67 of the Act; and,
3. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord's Agent attended the hearing at the appointed date and time and provided affirmed testimony. The Tenant did not attend the hearing. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Landlord's Agent and I were the only ones who had called into this teleconference. The Landlord's Agent was given a full opportunity to be heard, to make submissions, and to call witnesses.

I advised the Landlord's Agent that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. The Landlord's Agent testified that she was not recording this dispute resolution hearing.

The Landlord served the Tenant with the 10 Day Notice on May 17, 2022 by posting the notice on the Tenant's door. The Landlord uploaded a witnessed proof of service form #RTB-34 attesting to this service. I find the 10 Day Notice was deemed served on the Tenant on May 20, 2022 according to Sections 88(g) and 90(c) of the Act.

The Landlord's Agent testified that she served the Tenant with the Notice of Dispute Resolution Proceeding package-OP/MN on August 25, 2022 by Canada Post registered mail (the "NoDRP package-OP/MN"). The Landlord referred me to the Canada Post registered mail receipt with tracking number submitted into documentary evidence as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. I find that the Tenant was deemed served with the NoDRP package-OP/MN five days after mailing them on August 30, 2022 in accordance with Sections 89(1)(c) and 90(a) of the Act.

### Issues to be Decided

1. Is the Landlord entitled to an Order of Possession for a 10 Day Notice?
2. Is the Landlord entitled to a Monetary Order to recover money for unpaid rent?
3. Is the Landlord entitled to recovery of the application filing fee?

### Background and Evidence

I have reviewed all written and oral evidence and submissions presented to me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The Landlord's Agent confirmed that this tenancy began as a fixed term tenancy on March 9, 2022. The fixed term was to end on March 31, 2023. Monthly rent is \$2,100.00 payable on the first day of each month. A security deposit of \$1,050.00 was collected at the start of the tenancy and is still held by the Landlord.

The reason in the 10 Day Notice why the Landlord was ending the tenancy was because the Tenant owed \$2,100.00 in outstanding rent on May 1, 2022. The effective date of the 10 Day Notice was May 31, 2022.

The Landlord's Agent testified that the following amounts have been paid in rent since serving the 10 Day Notice:

RENT	Rent Owing	Rent/Partial Amount Paid	O/S Rent Total
May 2022	\$2,100.00	\$1,000.00	\$1,100.00
June 2022	\$2,100.00	\$2,820.00	\$380.00
July 2022	\$2,100.00	\$0.00	\$2,480.00
August 2022	\$2,100.00	\$0.00	\$4,580.00
September 2022	\$2,100.00	\$0.00	\$6,680.00
October 2022	\$2,100.00	\$0.00	\$8,780.00
November 2022	\$2,100.00	\$2,100.00	\$8,780.00
December 2021	\$338.71	\$0.00	\$9,118.71
TOTAL OUTSTANDING RENT:			\$9,118.71

The parties settled some aspects of this tenancy at a previous hearing date. The Tenant agreed to vacate the rental unit on December 5, 2022 @ 1 p.m. The Landlord no longer requires an Order of Possession.

The Landlord's Agent testified that she is seeking a Monetary Order for unpaid rent in the amount of \$10,814.00.

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

This hearing was conducted pursuant to Rules of Procedure 7.3, in the Tenant's absence, therefore, all the Landlord's testimony is undisputed. Rules of Procedure 7.3 states:

***Consequences of not attending the hearing:*** *If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.*

Section 26(1) of the Act specifies the rules about payment of rent. It states, *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 outlines how a tenancy can end for unpaid rent:

***Landlord's notice: non-payment of rent***

- 46** (1) *A landlord may 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.*
- (2) *A notice under this section must comply with section 52 [form and content of notice to end tenancy].*
- ...
- (5) *If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant*
- (a) *is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and*
- (b) *must vacate the rental unit to which the notice relates by that date.*
- ...

The Landlord's 10 Day Notice was deemed served on the Tenant on May 20, 2022. I find that the Landlord's 10 Day Notice complied with the form and content requirements of Section 52 of the Act. The parties previously attended an RTB settlement hearing regarding this tenancy which ended on December 5, 2022. Based on the undisputed testimony of the Landlord, the Tenant is still in rental arrears in this tenancy. I find the Tenant did not dispute the 10 Day Notice and is conclusively presumed to have accepted that the tenancy ended on December 5, 2022. I uphold the Landlord's 10 Day Notice.

I must consider if the Landlord is entitled to a Monetary Order for unpaid rent. Section 55 of the Act reads as follows:

**Order of possession for the landlord**

**55** ...

- (2) *A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:*

...

- (b) *a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired;*

...

- (4) *In the circumstances described in subsection (2) (b), the director may, without any further dispute resolution process under Part 5 [Resolving Disputes],*

- (a) *grant an order of possession, and*  
(b) *if the application is in relation to the non-payment of rent, grant an order requiring payment of that rent.*

I previously found that the Tenant did not apply to dispute the 10 Day Notice, and now the time for making that application has expired. Pursuant to Section 55(4)(b) of the Act, I find the Landlord is entitled to a Monetary Order for non-payment of rent. I find the total outstanding rent amount is \$9,118.71. RTB Rules of Procedure 4.2 allows me to amend the Landlord's original application amount, and I do so in this decision. Pursuant to Section 72(2)(b) of the Act, I order that the Landlord is authorized to retain the security deposit held by the Landlord in partial satisfaction of the monetary award. In addition, having been successful, I find the Landlord is entitled to recover the application filing fee paid to start this application, which I order may be deducted from the security deposit held pursuant to Section 72(2)(b) of the Act. The Landlord's Monetary Award is calculated as follows:

Monetary Award

TOTAL OUTSTANDING RENT:	\$9,118.71
Less security deposit:	-\$1,050.00
Plus application filing fee	\$100.00
TOTAL OWING:	\$8,168.71

For the benefit of the Landlord, the Landlord may wish to discuss with an Information Officer at the RTB the options available to her for any remaining claims she feels are necessary. An Information Officer can be reached at:

5021 Kingsway  
 Burnaby, BC  
 Phone: 250-387-1602 / 1-800-665-8779  
 Website: <https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies>

Conclusion

The Landlord's 10 Day Notice is upheld, and I grant a Monetary Order to the Landlord in the amount of \$8,168.71. 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 of British Columbia 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 Act.

Dated: December 20, 2022

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 Residential Tenancy Branch