



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

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

### Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear crossed applications regarding a tenancy.

On October 7, 2022 the tenant applied for:

- an order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent, dated October 2, 2022 (the 10 Day Notice)
- an order for the landlord to comply with the Act, regulation, and/or the tenancy agreement; and
- the filing fee.

On October 26, 2022 the landlord applied for:

- an order of possession, having served the 10 Day Notice;
- a monetary order for unpaid rent; and
- the filing fee.

The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were also made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

Neither party raised an issue regarding service of the hearing materials.

## Preliminary Matters

### *Naming of Parties*

In her application, the tenant named one landlord, GR, as a respondent. The landlord's application names two landlords as applicants: GR and HR. Therefore, on the cover page of the decision and in the order I have named both landlords.

### *Severing Unrelated Claim*

The Residential Tenancy Branch's Rules of Procedure 2.3 states:

**2.3 Related issues** Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

As it is not related to the central issue of whether the tenancy will continue, I dismissed, with leave to reapply, the tenant's claim for an order for the landlord to comply with the Act, regulation, and/or the tenancy agreement.

## Issues to be Decided

- 1) Is the tenant entitled to an order cancelling the 10 Day Notice?
- 2) If not, are the landlords entitled to an order of possession and a monetary order for unpaid rent?
- 3) Is the tenant entitled to the filing fee?
- 4) Are the landlords entitled to the filing fee?

## Background and Evidence

The parties agreed on the following particulars of the tenancy. It began June 15, 2021; rent is \$850.00, due on the first of the month; and the tenant paid a security deposit of \$450.00, which the landlords still hold.

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

The Notice states the tenancy is ending as the tenant failed to pay rent in the amount of \$2,550.00, due on October 1, 2022.

The landlord testified the 10 Day Notice was served on the tenant by attaching it to the door on October 2, 2022, and the tenant testified she received the Notice on October 2, 2022.

A second 10 Day Notice, dated September 30, 2022, is submitted as evidence.

Also submitted as evidence by the landlord is a Direct Request Worksheet, noting that rent was not paid for July and August 2022.

The landlord testified that the tenant made rent payments as follows:

<b>Month</b>	<b>Rent</b>	<b>Rent paid</b>	<b>Monthly outstanding</b>
July 2022	850	0	850
August 2022	850	0	850
September 2022	850	850	0
October 2022	850	850	0
November 2022	850	850	0
December 2022	850	850	0
January 2023	850	0	850

The tenant's testimony on rent paid and owing closely matched that of the landlord, except the tenant testified she paid rent in full for July and August 2022.

The tenant testified she did not have proof she paid rent in July and August 2022, as she paid in cash and the landlord did not give her receipts.

The landlord testified that the tenant had always paid rent by e-transfer. Submitted as evidence are e-transfer receipts from payments made by the tenant to the landlord. In a June 5 text string between the tenant and the landlord, submitted as evidence, the tenant refers to "the e-transfers I always send you." In a later text message, sent by the tenant to the landlord sometime after service of the September 10 Day Notice, the tenant writes: "All the rent I have paid has been through online transfer."

Submitted as evidence is an October 2, 2022 text message from the landlord to the tenant, containing a photo of the landlord's record of rent payments for the unit. It states that no rent was paid for July or August 2022. In the tenant's responsive text, she does not dispute the landlord's record that rent was not paid for July or August 2022.

The tenant testified that she intended to pay rent for January 2023 but had not yet due to her pay schedule.

The tenant testified that the landlord had asked her to move out.

The landlord's written submission states that in June 2022 he asked the tenant to vacate the unit, as he "did not know what the procedure was." The submission states that the tenant informed the landlord she may stay in the unit rent free for two months, and that she was planning to move out. The landlord's submission states that in September 2022 the landlord asked the tenant to pay for July and August 2022, but she did not. In the text string between the parties, submitted as evidence, the tenant informs the landlord that he was required to provide her with two month's notice.

### Analysis

Based on the testimony of the parties, I find the landlord served the 10 Day Notice on the tenant in accordance with section 88 of the Act and the tenant filed in time to dispute the Notice.

I find the 10 Day Notice meets the form and content requirements of section 52 of the Act.

Section 26 of the Act provides that a tenant must pay the rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, regulations, or the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent.

The landlord testified that the tenant did not pay rent for July or August 2022, that all of the tenant's rent payments had been made by e-transfer, and that after he asked the tenant to move out in June 2022, she informed him she was entitled to stay in the unit for two months without paying rent.

The tenant testified that she paid the rent for July and August 2022 by cash, and that she had no proof of payment because the landlord did not give her receipts

The following are submitted as evidence:

- a text message, sent by the tenant to the landlord after service of the September 10 Day Notice, in which the tenant wrote: "All the rent I have paid has been through online transfer"; and

- an October 2, 2022 text message from the landlord to the tenant, containing a photo of the landlord's record of rent payments for the unit, stating that no rent was paid for July or August 2022. In the tenant's response, she does not dispute that rent was not paid for July or August 2022.

Based on the evidence before me, I find the landlord's version of events with respect to the payment of rent more likely than that of the tenant's; I find the evidence supports the landlord's position and contradicts that of the tenant.

On a balance of probabilities, I find the landlord has proven the reason for 10 Day Notice and is therefore entitled to an order of possession and a monetary order for unpaid rent.

I dismiss the tenant's application to cancel the 10 Day Notice.

As the tenant still resides in the rental unit, I order that in accordance with section 68(2)(a) of the Act, the tenancy ended on the date of the hearing, January 6, 2023.

[Policy Guideline 3. Claims for Rent and Damages for Loss of Rent](#) states that a tenant is liable to pay rent until a tenancy agreement ends.

I find the landlord is entitled to recover \$850.00 in unpaid rent for each of July and August 2022, and \$164.52 for January 1–6, 2023 ( $850/31 \times 6 = 164.52$ ), for a total of \$1,864.52 ( $850 + 850 + 164.52$ ).

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the tenant is unsuccessful in her application, I decline to award her the filing fee. As the landlords are successful in their application, I order the tenant to pay the \$100.00 filing fee the landlord paid to apply for dispute resolution.

In accordance with section 72 of the Act, I allow the landlord to retain the tenant's \$450.00 security deposit in partial satisfaction of the amount owing. The landlord is entitled to a monetary order as follows:

Unpaid rent	1,864.52
Filing fee	100.00
Security deposit	-450.00
Owed to landlords	\$1,514.52

### Conclusion

The tenant's application is dismissed.

The landlords are granted an order of possession, which will be effective two days after it is served on the tenant. The order of possession must be served on the tenant. The order of possession may be filed and enforced as an order of the Supreme Court of British Columbia.

The landlords are granted a monetary order in the amount of \$1,514.52 for unpaid rent and recovery of the filing fee. 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: January 09, 2023

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Residential Tenancy Branch