



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

Tenant: CNR

Landlords: OPR-DR, MNR-DR

### Introduction

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

On August 8, 2022 the tenant applied for:

- an order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent, dated July 30, 2022 (the 10 Day Notice).

On August 18, 2022 the landlord applied for:

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

The hearing was attended by the landlord's agent and his interpreter, but not by the tenant, though the teleconference line remained open for 10 minutes. The landlord's agent was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; he was made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

The landlord's agent testified that he served the Notice of Dispute Resolution Proceeding (NDRP) and evidence on the tenant by posting it to the door on July 30, 2022, and submitted a witnessed proof of service form in support. I accept the undisputed affirmed testimony of the landlord's agent, and find that the landlord's NDRP and evidence was served on the tenant in accordance with section 89 of the Act, and deem it received by the tenant on August 2, 2022, pursuant to section 90 of the Act.

The landlord submitted additional evidence to the Residential Tenancy Branch on January 3, 2022. I have not considered this evidence in my decision because the landlord said he served it on the tenant by text message, which is not a method of

service recognized by the Act, and the tenant was not present to confirm she had received and had the opportunity to review the evidence before the hearing.

### Preliminary Matters

In her application, the tenant named the landlord (KWY) as respondent. The landlord's application names the landlord's representative (LC) as the applicant. Therefore, on the cover page of the decision and in the order I have named both landlord KWY and the landlord's representative, LC. For the remainder of the decision, I will refer to the landlord's representative as "the landlord."

The landlord testified that as the tenant vacated the rental unit on January 3, 2022, the landlord was not seeking an order of possession, only a monetary order for unpaid rent.

As the tenant has vacated the unit, I dismiss, without leave to reapply, the tenants' application for an order to cancel the 10 Day Notice and the landlord's application for an order of possession. The remainder of the decision will consider whether the landlord is entitled to a monetary order for unpaid rent.

In a previous hearing, as noted on the cover page, the parties reached a settlement. With the agreement of both parties, the arbitrator granted the landlord a monetary order in the amount of \$4,500.00 as payment on the undetermined amount of rent owed.

### Issue to be Decided

Is the landlord entitled to an additional monetary order for unpaid rent?

### Background and Evidence

The landlord provided the following particulars regarding the tenancy. It began July 1, 2020, and the tenant vacated the unit on January 3, 2023; rent was \$3,000.00, due on the first of the month; and the tenant paid a security deposit of \$1,500.00, which the landlord still holds.

A copy of the tenancy agreement was submitted as evidence. It indicates that rent is \$3,000.00.

The landlord submitted as evidence a Direct Request Worksheet, recording incomplete or unpaid rent payments for June, July, and August 2022.

The landlord testified that rent was paid and owing as follows:

Month	Rent owing	Rent paid	Monthly Outstanding
June 2022	\$3,000.00	\$2,000.00	\$1,000.00
July 2022	\$3,000.00	\$0.00	\$3,000.00
August 2022	\$3,000.00	\$1,400.00	\$1,600.00
September 2022	\$3,000.00	\$0.00	\$3,000.00
October 2022	\$3,000.00	\$0.00	\$3,000.00
November 2022	\$3,000.00	\$0.00	\$3,000.00
December 2022	\$3,000.00	\$0.00	\$3,000.00
Total			\$17,600.00

The landlord testified he is not seeking to recover any rent for January 2023.

### Analysis

Section 26(1) states that 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.

I find that the tenancy agreement requires the tenant to pay rent in the amount of \$3,000.00 on the first of the month.

Based on the landlord's testimony, I find the tenancy ended on January 3, 2023, the date the tenant vacated the rental unit.

I accept the landlord's undisputed affirmed testimony and documentary evidence on unpaid rent, noting that the landlord is not seeking to recover any unpaid rent for January.

Therefore, I find the landlord is entitled to unpaid rent in the amount of \$17,600.00.

In accordance with section 72 of the Act, I allow the landlord to retain \$1,500.00 of the tenant's security deposit in partial satisfaction of the amount owing.

As the landlord has previously been granted a monetary order in the amount of \$4,500.00 for unpaid rent, I find the landlord is entitled to an additional monetary order as follows:

Unpaid rent	\$17,600.00
Security deposit	-\$1,500.00
Prior monetary order	-\$4,500.00
<b>Additional monetary order</b>	<b>\$11,600.00</b>

### Conclusion

The landlord is granted a monetary order in the amount of \$11,600.00. 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 06, 2023

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Residential Tenancy Branch