



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR-DR, MNR-DR, FFL

### Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a residential tenancy dispute. On September 13, 2022 the landlords applied for:

- an order of possession for the rental unit, having issued a 10 Day Notice to End Tenancy for Unpaid Rent, dated September 4, 2022 (the 10 Day Notice);
- a monetary order for unpaid rent; and
- the filing fee.

The hearing was attended by the landlord's agent ("the landlord"), but not the tenant. The landlord was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

The landlord testified the Notice of Dispute Resolution Proceeding (NDRP) was served on the tenant by registered mail on October 30, 2022 and provided a tracking number as recorded on the cover page of the decision. The landlord testified their evidence was served on the tenant by registered mail on February 1, 2023, and provided a tracking number as recorded on the cover page. I find the landlord served the tenant the NDRP and evidence in accordance with section 89 of the Act. Pursuant to section 90, I deem the NDRP received by the tenant on November 4, 2022, and the landlord's evidence received on February 6, 2023.

Issues to be Decided

- 1) Is the landlord entitled to an order of possession?
- 2) Is the landlord entitled to a monetary order for unpaid rent?
- 3) Is the landlord entitled to the filing fee?

Background and Evidence

The landlord provided the following particulars regarding the tenancy. It began September 1, 2021; rent is \$900.00, due on the first of the month; and the tenant paid a security deposit of \$450.00 which the landlord still holds in trust.

A copy of the tenancy agreement is submitted as evidence and indicates that rent is \$900.00 a month.

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 reason indicated on page 2 of the 10 Day Notice is that the tenant has failed to pay rent in the amount of \$900.00 due on September 1, 2022.

The landlord testified the 10 Day Notice was served on the tenant by posting it to the door on September 4, 2022, and provided a witnessed proof of service form in support.

The landlord testified that rent is now owing as follows:

<b>Month</b>	<b>Rent</b>	<b>Rent paid</b>	<b>Monthly outstanding</b>
September 2022	\$900.00	\$0.00	\$900.00
October 2022	\$900.00	\$0.00	\$900.00
November 2022	\$900.00	\$0.00	\$900.00
December 2022	\$900.00	\$0.00	\$900.00
January 2023	\$900.00	\$0.00	\$900.00
February 2023	\$900.00	\$0.00	\$900.00
<b>Total</b>			<b>\$5,400.00</b>

Also submitted as evidence is a second 10 Day Notice to End Tenancy for Unpaid Rent, dated November 18, 2022, indicating that the tenant has failed to pay rent in the amount of \$2,700.00, due on November 1, 2022.

### Analysis

Section 46(1) permits a landlord to 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. A notice under this section must comply with the form and content provisions of section 52.

Sections 46(4) and (5) of the Act state:

- (4) Within 5 days after receiving a notice under this section, the tenant may
  - (a) pay the overdue rent, in which case the notice has no effect, or
  - (b) dispute the notice by making an application for dispute resolution.
- (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.

Based on the landlord's undisputed testimony and documentary evidence, I find the 10 Day Notice was served on the tenant on September 4, 2022, in accordance with section 88 of the Act, and deem the Notice received by the tenant on September 7, 2022, pursuant to section 90 of the Act.

I find the landlord's 10 Day Notice meets the form and content requirements of section 52 of the Act, as it is signed and dated, gives the address of the rental unit, states an effective date of the Notice, states the reasons for ending the tenancy, and is in the approved form.

I find the tenant did not pay the overdue rent or file an application for dispute resolution within 5 days of September 7, 2022, the timeline granted under section 46(4) of the Act. Accordingly, I find that the tenant is conclusively presumed under section 46(5) to have accepted that the tenancy ended on the corrected effective date of the 10 Day Notice, September 17, 2022, and must vacate the rental unit.

Therefore, I find the landlord is entitled to an order of possession.

As the landlord testified that 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, February 24, 2023.

The landlord provided affirmed undisputed testimony on the rent payments made by the tenant, and submitted as evidence a second 10 Day Notice indicating that the tenant failed to pay rent in the amount of \$2,700.00, due on November 1, 2022.

Considering the rent owing for February 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 accept the landlord's undisputed affirmed testimony that the tenant owes outstanding monthly rent for September 2022 to January 2023, and that the tenant has not paid rent for February 2023.

I find the landlord is entitled to recover \$4,500.00 in unpaid rent for September 2022 to January 2023, and \$771.43 for February 1–24, 2023 ( $900/28 \times 24$ ), for a total of \$5,271.43 ( $4,500.00 + 771.43$ ).

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

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

Unpaid rent	5,271.43
Filing fee	100.00
Security deposit	-450.00
<b>Owed to landlords</b>	<b>\$4,921.43</b>

### Conclusion

The landlords' application is granted.

The landlords are granted an order of possession which will be effective **two days** after it is received by 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 **\$4,921.43** 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: February 24, 2023

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Residential Tenancy Branch