



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

A matter regarding 1034076 BC LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes**

For the landlord: OPR-DR MNR-DR FFL  
For the tenant: CNR CNC OLC AS

### **Introduction**

This hearing was convened as a result of an Application for Dispute Resolution (application) by both parties, seeking remedy under the *Residential Tenancy Act* (Act). The landlord applied for an order of possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated October 4, 2022 (10 Day Notice) for a monetary order for unpaid rent or utilities, and to recover the cost of the filing fee. The tenants applied to cancel the 10 Day Notice, a 1 Month Notice, for a request for the landlord to comply with the Act, regulation or tenancy agreement, and for permission to sublet the rental unit.

The tenants and an agent for the landlord, LAH (agent) attended the teleconference hearing. The hearing process was explained to the parties, and the parties were given an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their relevant evidence orally and in documentary form prior to the hearing and make submissions to me.

Both parties confirmed receiving the documentary evidence package from the other party prior to the hearing, and that they had the opportunity to review that evidence prior to the hearing. I find the parties were sufficiently served in accordance with the Act. I have reviewed all evidence before me that met the requirements of the Rules of Procedure (Rules). However, only the evidence relevant to the issues and findings in this matter are described in this decision. Words utilizing the singular shall also include the plural and vice versa where the context requires.

### **Preliminary and Procedural Matters**

In addition to the above, the parties confirmed their email addresses at the outset of the hearing and stated that they understood that the decision will be sent by email. Any resulting orders will be sent to the appropriate party for service on the other party.

The tenants' filing fees were waived for their application. As the landlord paid a filing fee, I will address the landlord's filing fee later in this decision.

### Issues to be Decided

- Is the tenancy ending based on the 10 Day Notice under the Act?
- If yes, should an order of possession be granted to the landlord?
- Is the landlord entitled to a monetary order for unpaid rent or utilities?
- Is the landlord entitled to the recovery of the cost of the filing fee?

### Background and Evidence

A copy of the tenancy agreement was submitted in evidence and was reviewed during the hearing. A fixed-term tenancy began on February 1, 2020 and converted to a month-to-month tenancy after January 31, 2021. Monthly rent of \$1,450 was due on the first day of each month and eventually was increased to \$1,471.70, according to the parties.

During the hearing, tenant JC stated that they vacated in the middle of August 2022 and asked whether they would also be responsible for the unpaid rent. The parties were advised that all listed tenants on the tenancy agreement would be liable for any unpaid rent.

A copy of the 10 Day Notice was submitted in evidence. The tenants confirmed that they received the 10 Day Notice attached to their door on October 4, 2022. The 10 Day Notice is dated October 4, 2022. The 10 Day Notice indicates that \$1,471.70 was due on October 1, 2022. The effective vacancy date is listed as November 18, 2022.

The tenant confirmed that they did not pay the landlord rent and that as of the date of the hearing, the tenant owes the landlord a total of \$5,756 in rent arrears.

Tenant DC continues to occupy the rental unit. The landlord is seeking an order of possession, monetary order for rent arrears and the filing fee.

### Analysis

Based on the testimony of the parties and the documentary evidence before me, and on the balance of probabilities, I find the following.

When a tenant disputes a 10 Day Notice under the Act, the onus of proof is on the tenant to provide sufficient evidence that rent was paid. The tenant confirmed that they did not pay rent directly to the landlord for October 2022 and as of the hearing, now owes unpaid rent arrears of \$5,756. As a result, I find that the tenancy ended on the effective vacancy date listed on the 10 Day Notice, which was October 18, 2022. Given the above, I dismiss the tenant's applications without leave to reapply, due to insufficient evidence. I find that I do not need to consider the 1 Month Notice as the tenancy ended based on the 10 Day Notice. I find the 10 Day Notice complies with the formal requirements of section 52 of the Act.

**Order of Possession** – Pursuant to section 55 of the Act, once I dismissed the tenant's application to cancel the 10 Day Notice and I upheld the landlord's 10 Day Notice, I must grant the landlord an order of possession. Therefore, based on the above, I grant the landlord an order of possession effective **two (2) days** from service on the tenant.

**Unpaid rent** – Section 55(1.1) of the Act also applies and states:

55(1.1) If an application referred to in subsection (1) is in relation to a landlord's notice to end a tenancy under section 46 [*landlord's notice: non-payment of rent*], and the circumstances referred to in subsection (1) (a) and (b) of this section apply, **the director must grant an order requiring the payment of the unpaid rent.**  
[emphasis added]

Given the above, I must grant and do so order a monetary order in the amount of **\$5,756** for unpaid rent owing by the tenants to the landlord.

As the landlord's application had merit, I also grant the landlord the recovery of their **\$100** filing fee pursuant to section 72 of the Act. The monetary claim total is **\$5,856**.

### Conclusion

The tenant's application is dismissed, without leave to reapply, due to insufficient evidence.

The landlord's application is successful. The landlord has been granted an order of possession effective two (2) days after service on the tenant. The tenant must be served with the order of possession and the order of possession may be filed in the Supreme Court of British Columbia to be enforced as an order of that court.

The tenancy ended October 18, 2022.

The landlord is granted a total monetary order of \$5,856, comprised of \$5,756 in rent arrears plus the filing fee. The monetary order will be emailed to the landlord only for service on the tenant, if necessary. Should the landlord require enforcement of the monetary order, the order must be first served on the tenants with a demand for payment letter and may then be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

The tenant can be held liable for enforcement costs for both orders, including court costs and bailiff fees.

This decision will be emailed to the parties as noted above. The order of possession will be emailed to the landlord only for service on the tenant.

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: February 17, 2023

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Residential Tenancy Branch