



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

A matter regarding Anhart Homes CCC Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

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

### Introduction

This hearing dealt with an application by the landlord pursuant to the Residential Tenancy Act ("Act") for orders as follows:

- for an order of possession pursuant to section 55 of the Act
- for a monetary order for unpaid rent pursuant to section 67 of the Act
- for reimbursement of the filing fee pursuant to section 72 of the Act

While the applicant landlord attended the hearing by way of conference call, the respondent tenant did not. The landlord attended the hearing by way of an agent VN and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

Rule 7.1 of the Rules of Procedure provides as follows:

**7.1 Commencement of the hearing** The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

The hearing was conducted by conference call. The parties were reminded to not record the hearing pursuant to Rule of Procedure 6.11. The parties were affirmed.

The landlord testified that the tenant was served the 10 Day Notice dated October 13, 2022 with an effective date of October 27, 2022 delivered in person to the tenant on October 13, 2022. The landlord provided a witnessed proof of service form in evidence.

I find that the tenant was served on October 13, 2022 pursuant to sections 88 and 89 of the Act.

The landlord further testified that she served the dispute notice and evidence package on the tenant in person on November 30, 2022. The landlord provided a witnessed proof of service form in evidence. I find that the tenant was served on November 30, 2022 pursuant to sections 88 and 89 of the Act.

#### Issue(s) to be Decided

1. Is the 10 Day Notice to End Tenancy ("10 Day Notice") valid and enforceable against the tenant? If so, 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 recover the filing fee for this application?

#### Background and Evidence

The tenancy commenced April 4, 2020 and was on a fixed term for one year and then continued month to month thereafter. Rent is currently \$799.00 due on the first day of the month. The landlord still holds a security deposit of \$394.00 in trust for the tenant. The tenant still occupies the rental unit.

The landlord testified that the tenant has not paid any rent since October 2022. There was previously a co-tenant at the rental unit whose tenancy ended in July 2022. The co-tenant paid the tenant's rent for August and September 2022. As of October 1, 2022 the tenant has not paid rent and that was the basis for serving the 10 Day Notice on the tenant. The landlord stated that they are seeking compensation for five months of rent, from October 1, 2022 to February 1, 2023. The total amount of rent owing is \$3,995.00. the landlord provided a monetary order worksheet in evidence showing that rent was owed for the month of October 2022. Since the dispute application was filed, rent has not been paid.

#### Analysis

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so.

When a tenant fails to pay rent pursuant to the terms of the tenancy agreement, the landlord may serve the tenant a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, as here.

The 10 Day Notice sets out for the benefit of the tenant that the 10 Day Notice would be cancelled if the rent was paid within five (5) days. The 10 Day Notice also explained that alternatively the tenant had five days to dispute the 10 Day Notice by making an application for dispute resolution. I have no evidence before me that the tenant applied to dispute the 10 Day Notice.

I find the landlord submitted sufficient, unopposed evidence to prove that the tenant was served the Notice, owed the rent listed, did not pay the outstanding rent, or file an application for dispute resolution in dispute of the 10 Day Notice within five days of service.

I find the tenant is conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the 10 Day Notice, or October 27, 2022.

As a result, I order the tenancy ended on October 27, 2022, and I grant the landlord an order of possession of the rental unit pursuant to section 55(2) of the Act, effective **two days** after service of the order upon the tenant.

Section 55(4) of the Act allows me to make a monetary order for unpaid rent. I find that the landlord has established that the tenant has not paid rent in the amount of \$799.00 per month for a total of five months. The total amount of unpaid rent is \$3,995.00. I grant the landlord a monetary order in the amount of \$3,995.00 for unpaid rent.

As the landlord is successful in their application, they are also entitled to recover the \$100.00 filing fee for the application.

### Conclusion

The landlord is 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 in and enforced as an order of the Supreme Court of British Columbia.

The landlord is granted a monetary order for \$4,095.00 in recovery of the unpaid rent and 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 22, 2023

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Residential Tenancy Branch