



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

A matter regarding PRIME PLUS HOLDINGS LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes

Parties	File No.	Codes:
(Tenant) M.W.	310089008	CNC
(Landlord) Prime Plus Holding Ltd. Agent: K.N.	310094306	OPR-DR, FFL

### Introduction

This hearing dealt with cross applications for Dispute Resolution under the *Residential Tenancy Act* (“Act”) by the Parties.

The Tenant applied:

- to cancel a One Month Notice to End Tenancy for Cause dated October 15, 2022 (“One Month Notice”).

The Landlord applied:

- for a direct request for an order of possession for unpaid rent, further to having served a 10 Day Notice dated November 2, 2022 (“10 Day Notice”); and
- recovery of their \$100.00 application filing fee;

The Tenant and an agent for the Landlord, K.N. (the “Agent”), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about it.

During the hearing the Tenant and the Agent were given the opportunity to provide

their evidence orally and respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch (“RTB”) Rules of Procedure (“Rules”); however, only the evidence relevant to the issues and findings in this matter are described in this decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and the documentary evidence from the other Party and had reviewed it prior to the hearing.

### Preliminary and Procedural Matters

The Tenant provided the Parties’ email addresses in his application, and they confirmed these addresses in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

### Issue(s) to be Decided

- Should the 10 Day Notice be cancelled or confirmed?
- Is the Landlord entitled to an order of possession?
- Is the Landlord entitled to recovery of their \$100.00 Application filing fee?

### Background and Evidence

The Parties agreed that the tenancy began on June 1, 2019, with a current monthly rent of \$1,268.75. The Parties agreed that the Tenant paid the Landlord a security deposit of \$625.00, and no pet damage deposit. The Tenant said he still lives in the rental unit.

In the hearing, the Agent explained the reason why I should grant the Landlord an order of possession for the rental unit:

Since the 10 Day Notice was served, [the Landlord has received] no rent from Tenant for November. And since then, he didn’t pay rent in December [2022],

January [2023], February [2023], and March [2023]. So, the Landlord should be granted an order of possession.

The Tenant questioned the relevance of the Agent's comments about rent after November. He also argued that he never received a tenancy agreement and that he did not sign the tenancy agreement that the Landlord has submitted into evidence. Further, the Tenant said that he never agreed to pay rent on the first day of each month, and that he has not paid the rent on the first of every month. The Tenant submitted his rental transaction history, which shows that he paid rent on the following dates:

- October 14, 2022,
- September 1, 2022,
- August 2, 2022,
- July 9, 2022,
- June 9, 2022,
- May 4, 2022,
- . . .
- October 14, 2022.

The Parties agreed that the Tenant has not paid any rent since October 2022.

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 46 of the Act states that a landlord may 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. Section 46 also states that the 10 Day Notice must comply with section 52, as to form and content.

In the hearing, the Parties agreed that the 10 Day Notice was served to the Tenant on November 2, 2022. The Tenant applied for dispute resolution to contest the validity of the One Month Notice, not the 10 Day Notice.

Section 46 (5) of the Act states that if a tenant who has received a notice under this section does not pay the rent or apply for dispute resolution in accordance with subsection (4), the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date.

The Tenant would not say, and did not direct me to any of his evidence that indicates if or when he paid his rent in November 2022. The Landlord said that the Tenant never paid his rent for November 2022. The Tenant did not dispute this assertion.

As there is no evidence before me that the Tenant paid his November 2022 rent or disputed the 10 Day Notice, I find that he is conclusively presumed under section 46 (5) of the Act to have accepted the 10 Day Notice. I find that the tenancy ended on November 15, 2022. As a result, I find that the Tenant is overholding the rental unit and the Landlord is therefore entitled to an Order of Possession pursuant to section 55 (2) (b) of the Act. As the effective date has passed and the Agent testified that rent has not been paid from November 2022 through March 2023, the Order of Possession will therefore be effective two days after service on the Tenant.

**Pursuant to section 55** of the Act, I grant the Landlord an **Order of Possession** of the rental unit **effective two days after it is (deemed) served** to the Tenant.

Section 55 (1.1) states that if a tenant applies to dispute a landlord's notice to end a tenancy, then the director must grant an order requiring the payment of the unpaid rent by the tenant, if the following apply:

- (a) the landlord's notice to end tenancy complies with section 52 *[form and content of notice to end tenancy]*, and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice;

I find that the 10 Day Notice complies with section 52 of the Act, as to form and content. Further, I uphold the Landlord's 10 Day Notice to end the tenancy, and I find that the Landlord is eligible for a monetary order pursuant to the Tenant's Application. The undisputed evidence before me is that the Tenant has failed to pay the Landlord any of his \$1,268.75 monthly rent owing from November 2022 through and including March 2023. I, therefore, find that the Tenant owes the Landlord **\$6,343.75** in outstanding rent. Accordingly, I **award the Landlord with \$6,343.75** from the Tenant, pursuant to sections 26, 46, 55 (1.1), and 67 of the Act.

Given their success in this matter, I also award the Landlord recovery of their **\$100.00** filing fee from the Tenant, pursuant to section 72 of the Act.

I find that this claim meets the criteria under section 72 (2) (b) of the Act to be offset against the Tenant's **\$625.00 security deposit**. The Landlord is authorized to retain the

Tenant's \$625.00 security deposit in partial satisfaction of the Landlord's monetary awards. I grant the Landlord a **Monetary Order of \$5,818.75**.

### Conclusion

The Tenant is unsuccessful in his application, as he failed to dispute the 10 Day Notice for which the Landlord seeks an order of possession and he has never paid his rent for the month relevant to the 10 Day Notice.

Pursuant to section 55 of the Act, I grant an **Order of Possession** to the Landlord effective **two days after service of this Order** on the Tenant. The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. **Should the Tenant fail to comply with this Order**, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

The Landlord is awarded recovery of their **\$100.00** Application filing fee from the Tenant. The Landlord is also awarded recovery of the unpaid rent owed them by the Tenant of **\$6,343.75**. The Landlord is authorized to retain the Tenant's **\$625.00** security deposit in partial satisfaction of these monetary awards.

I grant the Landlord a **Monetary Order** for the remainder owing of **\$5,818.75** from the Tenant. The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. **Should the Tenant fail to comply with this Order**, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court. In lieu of serving and enforcing this Order, the Landlord is authorized to retain \$100.00 from the Tenant's security deposit, should they wish to do so.

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: March 07, 2023

---

Residential Tenancy Branch