



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

A matter regarding Century Manors Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR, FFT

### Introduction

This hearing dealt with an application by FT (the “tenant”) pursuant to the Residential Tenancy Act (the “Act”) for the following orders:

1. cancellation of the 10-Day Notice to End Tenancy for Unpaid Rent (the “10-Day Notice”) pursuant to section 46; and
2. authorization to recover the filing fee for this application from the landlord pursuant to section 72.

ND (the “landlord”) appeared at the hearing. ND was given full opportunity to be heard, to present testimony and to make submissions.

### Preliminary Matters

While the tenant did not appear at the hearing, I waited until 9:40 a.m. in order to enable the applicant tenant to connect with the teleconference which was scheduled for 9:30 a.m.

Rule of Procedure 7.3 discusses the consequences of a party not attending a hearing.

#### **7.3 Consequences of not attending the hearing**

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

In accordance with the above, I dismiss the tenant’s applications in their entirety without leave to re-apply.

Issue(s) to be Decided

1. Is the landlord entitled to an order of possession and a monetary order for unpaid rent?

Background and Evidence

While I have considered the documentary evidence and the testimony of NP, not all of the details of their submissions and evidence are reproduced here. The relevant and important aspects of NP's statements and my findings are set out below.

NP stated that while YH is listed on the Tenancy Agreement as the tenant, they died approximately two years ago. At the time of YH's death, the tenant continued to reside in the unit. NP confirmed that he continued to accept rent payments from the tenant as he did not want to kick them out at that time.

NP confirmed the following details of the tenancy. The tenancy commenced between the landlords and YT on November 1, 2014. The landlords collected a security deposit in the amount of \$460.00 from YT, which the landlords continue to hold in trust. Monthly rent is \$1,061.00 payable on the first of each month.

The landlords issued a 10-Day Notice by way of posting it to the door of the rental unit on February 8, 2023, because the tenant failed to pay rent for the month of February 2023. NP stated that rent is currently outstanding for the months of February and March 2023. When questioned as to the additional charges listed on the 10-Day Notice, NP stated that the tenant owed the landlord \$90.00 in outstanding rent prior to February and that the tenant was charged a \$50.00 late fee.

Analysis

Based on the submissions of NP, I find there is an implied tenancy between the tenant and the landlords.

Section 26 of the Act requires tenants to pay rent on time unless they have a legal right to withhold some of the rent. Section 46(1) of the Act allows landlords to end a tenancy if the tenant does not pay rent on time by issuing a 10-Day Notice.

I accept NP's evidence that the 10-Day Notice was issued because the tenant did not pay rent for the month of February 2023. Therefore, I find on a balance of probabilities that the Notice was issued for a valid reason, namely, the non-payment of rent. I also find that the Notice complies with the form and content requirements of section 52.

Based on the above findings, the landlords are granted an order of possession under section 55(1) of the Act. A copy of the order of possession is attached to this Decision and must be served on the tenant. The tenant has two days to vacate the rental unit from the date of service or deemed service.

Since the application relates to a section 46 notice to end tenancy, the landlords are entitled to an order for unpaid rent under section 55(1.1) of the Act.

NP claims that the tenant owes an additional \$90.00 for unpaid rent prior to February 2023. However, I find NP's evidence vague on this point, and, on that basis, I find NP has not established that the landlords are entitled to the \$90.00 claimed.

NP claims that the landlords are owed \$50.00 in late payment fees. I acknowledge that the Tenancy Agreement indicate that fees may be charged if rent is late; however, there is no evidence before me that the tenant who did not sign the Tenancy Agreement was aware of the late payment fees. On that basis, I decline to award the \$50.00 late payment fee to the landlords.

The tenant is ordered to pay the outstanding \$1,662.00 in unpaid rent to the landlords.

In accordance with the off-setting provisions of section 72 of the Act, I order the landlords to retain the tenant's security deposit in partial satisfaction of the monetary orders.

### Conclusion

The landlords are granted an order of possession which will be effective two days after service upon the tenant. The Order of Possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

I issue a Monetary Order in the landlords' favour in the amount of \$1,662.00 as follows:

Item	Amount
Rent due February and March 2023 (2 x \$1,061.00)	\$2,122.00
Security Deposit	(-\$460.00)
<b>Total Monetary Order</b>	<b>\$1,662.00</b>

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.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: March 16, 2023

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Residential Tenancy Branch