



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant: CNR, MNDCT, LRE, OLC, FFT
Landlord: OPR-DR, MNR-DR, FFL

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear two crossed applications regarding a tenancy.

The tenant applied on November 8, 2022 for:

- an order to cancel a 10 Day Notice to End Tenancy For Unpaid Rent, dated November 3, 2022 (the 10 Day Notice);
- compensation for monetary loss or other money owed;
- an order to suspend or set conditions on the landlord's right to enter the unit;
- an order for the landlord to comply with the Act, Regulation, or tenancy agreement; and
- recovery of the filing fee.

The landlord applied on November 22, 2022 for:

- an order of possession for the rental unit, having issued the 10 Day Notice;
- a monetary order for unpaid rent, having issued the Notice; and
- recovery of the filing fee.

The landlord's agent ("the landlord") attended the hearing, but the tenant did not, though the teleconference line remained open for 10 minutes. The landlord was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were also made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

The landlord testified the tenant was served with the landlord's Notice of Hearing and evidence on February 15, 2023 by registered mail, and the landlord provided a tracking number as noted on the cover page. I find the dispute resolution proceeding package

served on the tenant in accordance with section 89 of the Act, and deem it received by the tenant on February 20, 2023, pursuant to section 90 of the Act. As the tenant had submitted an application that was crossed with the landlord's, the tenant would also have been provided with the details of the hearing by the Residential Tenancy Branch.

Preliminary Matter

As the tenant did not attend the hearing, I dismiss with leave to reapply their claims for compensation for monetary loss or other money owed, an order to suspend or set conditions on the landlord's right to enter the unit, and an order for the landlord to comply with the Act, Regulation, or tenancy agreement.

Issues to be Decided

- 1) Is the tenant entitled to an order cancelling the 10 Day Notice?
- 2) If not, is the landlord entitled to an order of possession and a monetary order for unpaid rent?
- 3) Is the tenant entitled to the filing fee?
- 4) Is the landlord entitled to the filing fee?

Background and Evidence

The landlord testified that the tenancy agreement was for a fixed term beginning March 30, 2022, ending March 31, 2023. Rent is \$9,875.00, due on the first of the month, and the tenant paid a security deposit of \$4,937.50, which the landlord still holds. A copy of the tenancy agreement is submitted as evidence, and states that rent is \$9,875.00.

The landlord testified that the tenant still occupies the rental unit.

The landlord testified that the tenant was served with the 10 Day Notice on November 3, 2022, by email and registered mail. A Proof of Service form is submitted as evidence, with an Address for Service form signed by the landlord and tenant, demonstrating that the parties agreed to service by email.

The 10 Day Notice is submitted as evidence. It is signed and dated by the landlord, gives the address of the rental unit, states the effective date of the Notice, states the grounds for ending the tenancy, and is in the approved form.

Page 2 of the Notice states that the landlord is ending the tenancy because the tenant failed to pay rent in the amount of \$9,875.00 due on November 1, 2022.

The landlord testified the rent for November 2022 remains unpaid, and that the tenant now owes rent as follows:

Month	Rent Paid	Monthly Rent Owing
November 2022	\$0.00	\$9,875.00
December 2022	\$0.00	\$9,875.00
January 2023	\$0.00	\$9,875.00
February 2023	\$0.00	\$9,875.00
March 2023	\$0.00	\$9,875.00
Total		\$49,375.00

Submitted as evidence is an account summary which supports the landlord's testimony on outstanding rent.

Analysis

Based on the landlord's undisputed evidence, I find the landlord served the tenant the 10 Day Notice by email on November 3, 2022, in accordance with section 88 of the Act, and deem the Notice received by the tenant on November 6, 2022, in accordance with section 44 of the Regulation.

I find the 10 Day Notice meets the form and content requirements of section 52 of the Act.

Section 26 provides that a tenant must pay the rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, Regulation, or the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent.

The landlord testified that the tenant did not pay rent for November 2022 to March 2023. Submitted as evidence is an account summary which supports the landlord's testimony on outstanding rent.

Based on the evidence before me, I find the landlord has proven the reason for 10 Day Notice and is therefore entitled to an order of possession and a monetary order for unpaid rent.

I dismiss the tenant's application to cancel the 10 Day Notice.

As 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, March 21, 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 find the landlord is entitled to recover \$9,875.00 in unpaid rent for each month from November 2022 to February 2023, and \$6,689.52 for March 21, 2023 ($9,875/31 \times 21$), for a total of \$46,189.52 ($4 \times 9,875 + 6,689.52$).

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the tenant is unsuccessful in their application, I decline to award them the filing fee; as the landlord is successful, I order the tenant to pay the \$100.00 filing fee the landlord paid to apply for dispute resolution.

In accordance with section 72 of the Act, I allow the landlord to retain the tenant's \$4,937.50 security deposit in partial satisfaction of the amount owing. The landlord is entitled to a monetary order as follows:

Unpaid rent	46,189.52
Filing fee	100.00
Security deposit	– 4,937.50
Owed to landlord	\$41,352.02

Conclusion

The tenant's application is dismissed.

The landlord's application is granted.

I grant the landlord an order of possession, which must be served on the tenant and is effective two days after it is received by the tenant. This order may be filed in, and enforced as an order of, the Supreme Court of British Columbia.

I hereby grant the landlord a monetary order in the amount of \$41,352.02. 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: March 21, 2023

Residential Tenancy Branch