



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## DECISION

Dispute Codes      OPR-DR, MNR-DR, FFL

### Introduction

The tenant applied on 8 December 2022 to the Residential Tenancy Branch [the 'RTB'] for Dispute Resolution, asking me for the following orders against the landlord.

1. Cancellation of a 10-day notice to end tenancy [the '10-day Notice'], *per* section 46 (1) of the *Residential Tenancy Act* [the 'Act'].

The landlord cross-applied on 14 December 2022, asking me for the following orders against the tenant.

1. Possession of the rental unit, *per* section 55 (2) of the Act.
2. Requirement to pay unpaid rent, *per* section 55 (1.1) of the Act.
3. Reimbursement of the \$100.00 filing fee for this application, *per* section 72 (1) of the Act.

The landlord appeared at the hearing on 13 March 2023, but the tenant did not appear. The landlord submitted that the tenant has already vacated the unit.

### Preliminary Issues

I proceeded with this hearing in the absence of the tenant. This is why I did so.

In December 2022, the RTB scheduled this hearing for 17 April 2023 by way of a Notice of Dispute Resolution Proceeding [the 'Hearing Notice'].

About a month before this (12 November), the parties had agreed in writing to service of documents via e-mail. They did this using an RTB 'Address for Service' form [the 'Service Form'].

The landlord told me that on 16 December 2022 they e-mailed the tenant with the Hearing Notice. This Hearing Notice set out the landlord's claims against the tenant. In particular, the Hearing Notice recorded that the landlord claimed unpaid rent from the tenant, as well as the filing fee.

Then, in February 2023, the RTB rescheduled this hearing for 13 March. They did this via a Notice of Rescheduled Dispute Resolution Proceeding [the 'Rescheduling Notice']. In this notice, RTB informed the landlord that, 'This document [the Rescheduling Notice] does not need to be served to the other party.'

After the hearing started, I directed the landlord submit additional documents to the RTB on the same day as the hearing, *per* rule 3.19. These documents were:

1. A copy of the Rescheduling Notice.
2. A copy of the Service form.
3. A copy of a DocuSign certification [the 'Certification'], providing identifying information of the parties who appended their digital signatures to a Mutual Agreement to End Tenancy [the 'Mutual Agreement' – see more below].

Of these, documents 1 and 2 merely corroborated what the landlord said about:

- a) the RTB not requiring the landlord to serve the Rescheduling Notice on the tenant; and
- b) how the landlord served the original Hearing Notice on the tenant.

I did not, therefore, require the tenant to have an opportunity to respond to these documents, *per* rule 3.19 of the RTBs Rules of Procedure.

Based on the landlord's evidence during this hearing, I was satisfied that the tenant had been notified of:

1. the rescheduled hearing (directly by the RTB on 21 February 2023); and
2. the nature of the landlord's claims against the tenant (by the landlord on 16 December 2022).

Rule 7.3 of the RTBs Rules of Procedure reads:

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.

Relying upon this rule, and satisfied by the evidence that the tenant was served notice of the claims against them, and was served with notice of this hearing, I decided to conduct the hearing in the absence of the tenant.

### Issues to be Decided

Does the tenant owe rent to the landlord?

### Background and Evidence

The following is a summary of the pertinent and undisputed evidence of the landlord given at this hearing.

Early this year, the landlord learned that the tenant had vacated the unit sometime in January. I asked the landlord if they knew when in January the tenant vacated the unit. But the landlord did not know precisely when.

The landlord then found a new tenant, who moved into the unit on 1 February 2023.

The former tenancy (which is the subject of this dispute) began on 1 October 2022. To create the tenancy, the parties signed a tenancy agreement. The agreement was that the tenant would pay the landlord \$1,500.00 on the first day of every month for rent.

This agreement also included an addendum. Part of that addendum read, 'Tenant agrees to vacate apartment on any previously determined dates, in exchange for pro-rated rent, including but not limited to Jan 15-30, 2023...' In other words, the parties agreed that if the tenant vacated the unit before the next month's rent was due, then the tenant would only pay rent on a *pro-rata* basis for the month during which they vacated.

The landlord requested a security deposit of \$750.00 and during the first few months of the tenancy, the tenant paid to the landlord \$425.00 of the deposit.

But soon the tenant fell behind in paying her rent as well. So the landlord decided that the tenancy was unsuccessful. As a result, the landlord proposed the Mutual Agreement, with a move-out date of 15 January 2023. Both parties signed that Mutual Agreement in November 2022. The landlord's Certification corroborated this.

After making the Mutual Agreement, the tenant then refused to pay any rent for December. As a consequence, the landlord served the tenant with the 10-day Notice, giving an earlier move-out date of 17 December 2022. The landlord served the 10-day Notice on 2 December 2022, by sending it to the tenant via registered mail.

The 10-day Notice was in a form approved by the RTB; it was written, signed, and dated; it gave the address of the rental unit; and it cited non-payment of rent as the reason to end the tenancy.

The tenant responded by filing their application for dispute resolution, seeking to cancel the 10-day Notice. And then the landlord cross-filed their applications, and paid \$100.00 as a filing fee.

The landlord told me that the pro-rated rent owing for January amounts to \$750.00.

### Analysis

*Does the tenant owe rent to the landlord?*

The undisputed evidence was that the tenant did not pay rent for December, and that rent was \$1,500.00.

The evidence showed that the tenant stayed on after December, into January. I cannot determine when in January 2023 the tenant actually moved out of the unit. But I do not have to as the tenant agreed via the Mutual Agreement that they would move out on 15 January. And so, based on this Mutual Agreement, the tenant also owes the landlord rent for the period 1 to 15 January 2023.

Also, I find that:

1. as January has 31 days; and
2. the Mutual Agreement stipulated a move-out date of 15 January (that is, 15 of the 31 days of January):

the *pro rata* is 48% [15/31]. And 48% of January's rent is \$720.00.

In sum, I find that that the tenant owes the landlord \$2,220.00 in unpaid rent.

Conclusion

As the tenant failed to appear at this hearing and advance their claim, I dismiss their application to cancel the 10-day Notice, without leave to re-apply.

I order that the tenant pay to the landlord \$2,220.00 for unpaid rent *per* section 55 (1.1) of the Act.

And as the landlord succeeded in this application, I order that the tenant must reimburse the landlord \$100.00 for the filing fee, *per* section 72 (1) of the Act.

I authorise the landlord to retain the tenant's security deposit of \$425.00 in partial satisfaction of the total sum of \$2,320.00 owing to the landlord.

The landlord must serve this order on the tenant as soon as possible. If the tenant does not comply with my order, then the landlord may file this order in the Small Claims Division of the Provincial Court of British Columbia. Then the landlord can enforce my order as an order of that court.

I make this decision on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the *Residential Tenancy Act*.

Dated: 15 March 2023

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Residential Tenancy Branch