



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      CNR,

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant filed under the Residential Tenancy Act (the “Act”), to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”), issued on February 6, 2023.

Both parties appeared, gave testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to relevant facts and issues in this decision.

### Issue to be Decided

Should the Notice be cancelled?

### Background and Evidence

The tenancy began on November 15, 2022. Rent in the amount of \$2,800.00 was payable on the first of each month. A security deposit of \$1,400.00 and a pet damage deposit of \$700.00 was paid by the tenant.

The tenant testified that they received the Notice on February 6, 2023. The tenant stated that the rent was not paid in full within 5 days. Nor did they have the authority under the Act to withhold the rent.

The landlord testified that the tenant did not pay the outstanding rent listed in the Notice, (\$2,800.00 + \$700.00) and failed to pay March 2023 rent, (\$2,800.00). The landlord stated they did receive a payment of \$1,100.00 on March 10, 2023, to be applied to rent owed. The landlord seeks an order of possession and a monetary order for unpaid rent in the total amount of **\$5,200.00**.

The landlord testified that the tenant has also failed to pay utilities in the amount of \$772.10 and the new utilities are due in the amount of \$250.00. The tenant agreed that they owed the outstanding utilities of \$1,022.10 and agrees to pay as a full and final settlement of the utilities.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

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 to End Tenancy for Unpaid Rent.

Upon review of the Notice, I find the Notice is completed in accordance with the requirements of section 52 of the Act.

Under the legislation the tenant may dispute the Notice for specific reasons, such as they have proof that their rent was paid or that the tenant had the right under the Act to deduct all or a portion from their rent.

Although the tenant filed an application for dispute resolution within the time limit permitted under the Act, I find the tenant's application had no merit as the tenant admitted rent was not paid within 5 days after receiving the Notice, nor did they have the authority to withhold rent.. Therefore, I dismiss the tenant's application without leave to reapply.

Further, the evidence of the parties supports rent in the amount of \$5,200.00 remains unpaid.

As the tenant's application is dismissed, I find the landlord is entitled to an order of possession, pursuant to section 55(1) of the Act and a monetary order pursuant to

section 55 (1.1) of the Act for the unpaid rent. As the issue of the unpaid utilities was settled, pursuant to section 63 of the Act, that amount will be included in the monetary order.

I find that the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective two days after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

I find the landlord is entitled to a monetary order, pursuant to section 55(1.1) of the Act for the unpaid rent in the amount of \$5,200.00 and pursuant to section 63 of the Act, for unpaid utilities in the amount of \$1,022.10 for a total monetary order of **\$6,222.10**.

Under section 38(4)(b) of the Act, the landlord is ordered to retain the security deposit of \$1,400.00 and pet deposit of \$700.00 as partial satisfaction of the above monetary award. The landlord is granted a monetary order for the remaining amount due in the amount of **\$4,122.10**. The monetary order is enforceable in the Provincial Court of British Columbia (Small Claims Court). The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

### Conclusion

The tenant's application is dismissed. The landlord is granted an order of possession and a monetary order for the balance due of unpaid rent and utilities.

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 13, 2023

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Residential Tenancy Branch