



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

A matter regarding Midtown Club Suites  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR  
                             OPR-DR, MNR-DR, FFL

### Introduction

This hearing dealt with an application filed by both the tenant and the landlord pursuant to the Residential Tenancy Act (the “Act”):

The tenant applied for:

- cancellation of the 10-Day Notice to End Tenancy for Unpaid Rent (the 10-Day Notice”) pursuant to section 46.

The landlord applied for:

- an Order of Possession based on a 10-Day Notice pursuant to section 55;
- a Monetary Order for unpaid rent pursuant to section 67 of the Act; and,
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

KP (the “tenant”) appeared at the hearing. SL appeared as agent for the corporate landlord.

As both parties were in attendance, I confirmed that there were no issues with service of the Notice of Dispute Resolution Proceeding packages and evidence. In accordance with sections 88 and 89 of the Act, I find that both parties were served with the other’s application materials.

Both parties were given full opportunity to be heard, present testimony and make submissions. All parties confirmed they were not recording the hearing pursuant to Rule of Procedure 6.11.

Issue(s) 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?
3. Is the landlord entitled to recover the cost of the filing fee?

Background and Evidence

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

The parties confirmed that the tenancy commenced by way of written agreement on May 1, 2019. Monthly rent is \$1,522.00 payable on the first of each month. The tenant paid the landlord a security deposit in the amount of \$750.00 which the landlord continues to hold in trust.

SL testified that JS served the tenant with the 10-Day Notice on April 3, 2023, in person.

The tenant confirmed receipt of the 10-Day Notice.

SL testified that the 10-Day Notice was issued due to the tenant's failure to pay rent on April 1<sup>st</sup>, 2023. SL testified that the tenant paid half of his April rent on April 3<sup>rd</sup>, the same day the 10-Day Notice was issued. The 10-Day Notice was issued based on the tenant's failure to pay the outstanding \$761.00 due on April 1, 2023.

SL testified that the rent is currently outstanding for May 2023. The landlord is seeking and Order of Possession and Monetary Order for the outstanding rent.

The tenant testified that he was only able to pay half of the rent due on April 1, 2023, because of a reduction in income due to his age. The tenant conceded that he was not able to pay rent due on May 1, 2023 because he received his income late and required it for other expenses.

Analysis

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*.

The landlord's undisputed evidence shows that the tenant failed to pay half of the rent that was due on April 1, 2023. Therefore, I find on a balance of probabilities that the

Notice was given for a valid reason, namely, the tenant's non-payment of rent. I also find that the Notice complies with the form and content requirements of section 52. As a result, the tenant's application to cancel the Notice is dismissed.

Based on the above findings, the landlord is 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 landlord's application relates to a section 46 notice to end tenancy, the landlord is also entitled to an order for unpaid rent under section 55(1.1) of the Act. Therefore, the tenant is ordered to pay the outstanding rent for April and May in the amount of \$2,283.00 to the landlord.

Since the landlord was successful in their application, they are entitled to recover the cost of the filing fee paid for this application.

The landlord continues to hold the tenant's security deposit of \$750.00 in trust. In accordance with the off-setting provisions of section 72 of the Act, I order the landlord to retain the tenant's security deposit in partial satisfaction of the monetary orders.

### Conclusion

The tenant's application is dismissed without leave to reapply.

The landlord is 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 Landlord's favour in the amount of \$1,633.00 as follows:

<b>Item</b>	<b>Amount</b>
Rent outstanding for April 2023	\$761.00
Rent due May 2023	\$1,522.00
Filing Fee	\$100.00
Security Deposit	(-\$750.00)
<b>Total Monetary Order</b>	<b>\$1,633.00</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 *Residential Tenancy Act*.

Dated: May 16, 2023

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Residential Tenancy Branch