



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      Tenant: CNR-MT, MNDCT, PSF, LRE, OLC, FFT  
Landlord: OPR, MNRL-S, FFL

### Introduction

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

On December 6, 2022 the tenant applied for:

- an order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent, dated December 2, 2022 (the 10 Day Notice), requesting more time to dispute the Notice;
- compensation for monetary loss or other money owed;
- an order for the landlord to provide services or facilities required by the tenancy agreement or law;
- an order to suspend or set conditions on the landlord's right to enter the rental unit;
- an order for the landlord to comply with the Act, regulation, and/or the tenancy agreement; and
- recovery of the filing fee.

On January 19, 2023 the landlord applied for:

- an order of possession, having served the 10 Day Notice;
- a monetary order for unpaid rent, requesting to retain the security and/or pet damage deposit; and
- recovery of the filing fee.

The parties were 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.

Neither party raised an issue regarding service of the hearing materials.

### Preliminary Matters

As the tenant's compensation claim to recover the \$100.00 they paid to apply for dispute resolution duplicates their claim to recover the filing fee, I dismiss without leave to reapply the tenant's compensation claim.

The Residential Tenancy Branch's Rules of Procedure 2.3 states:

**2.3 Related issues** Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

As they are not related to the central issue of whether the tenancy will continue, I dismiss, with leave to reapply, the tenant's claims for an order for the landlord to provide services or facilities required by the tenancy agreement or law; an order to suspend or set conditions on the landlord's right to enter the rental unit; and an order for the landlord to comply with the Act, regulation, and/or the 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 parties agreed on the following particulars of the tenancy. It began October 16, 2022; rent is \$2,000.00, due on the last day of the month for the following month; and the tenant paid a security deposit of \$1,000.00. The parties agree the tenant paid the security deposit to a third party, SZ, as noted on the cover page of the decision.

A copy of the 10 Day Notice is submitted as evidence. It is signed and dated by the landlord's agent GL, gives the address of the rental unit, states an effective date, states the grounds for ending the tenancy, and is in the approved form.

The Notice states the tenancy is ending as the tenant failed to pay rent in the amount of \$2,000.00, due on December 1, 2022.

The landlord testified the 10 Day Notice was served on the tenant in person, by putting a copy in the mailbox, and by attaching it to the door, both on December 2, 2022. The tenant testified she was not served the Notice in person, but received a copy of it in her mailbox on an unknown date.

The landlord testified that they had given agent SZ power of attorney, authorizing SZ to rent the unit to the tenant. A translation and the original document is submitted as evidence. The landlord testified that after SZ did not give her the \$4,000.00 he collected from the tenant for the security deposit and rent, the landlord revoked SZ's power of attorney on November 21, 2022. A translation and the original document is submitted as evidence.

The landlord testified that on November 21 and 28, 2022, the landlord's lawyer served a letter on the tenant, informing the tenant that as SZ has refused to pay the landlord the \$4,000.00 the tenant paid SZ, the landlord has revoked SZ's role of agent for the landlord. The letter instructs the tenant to pay all rent to the landlord "from now on." A copy of the letter is submitted as evidence. The tenant testified that she received a copy of the letter.

The landlord testified they served the 10 Day Notice on the tenant because the tenant told the landlord the tenant had continued to pay rent to SZ, and the tenant had not paid rent to the landlord despite repeated demands from the landlord to do so.

The landlord testified they seek to recover rent as follows:

<b>Month</b>	<b>Rent</b>	<b>Rent paid to the landlord</b>	<b>Monthly outstanding</b>
December 2022	\$2,000.00	\$0.00	\$2,000.00
January 2023	\$2,000.00	\$0.00	\$2,000.00
February 2023	\$2,000.00	\$0.00	\$2,000.00
March 2023	\$2,000.00	\$0.00	\$2,000.00
April 2023	\$2,000.00	\$0.00	\$2,000.00
<b>Total</b>			<b>\$10,000.00</b>

The tenant confirmed that they had continued to pay rent to SZ, not the landlord, despite having received the landlord's letter stating that SZ was no longer the landlord's agent, and that the tenant must pay rent directly to the landlord. The tenant submitted she had continued to pay rent to SZ because as the landlord does not reside in Canada, she is "not legal in Canada."

### Analysis

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

Based on the testimony of the parties, I find the landlord served the 10 Day Notice on the tenant in accordance with section 88 of the Act and that the tenant filed in time to dispute the Notice.

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

Section 26 of the Act 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, regulations, 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 after the landlord's agent SZ did not pay the landlord the \$4,000.00 for the tenant's security deposit and rent, the landlord revoked SZ's role as agent. The landlord testified they communicated the same to the tenant, in writing, telling the tenant that they must begin paying rent to the landlord.

During the hearing, the tenant testified that contrary to the landlord's instruction, the tenant continued to pay rent to SZ because the landlord does not live in Canada and therefore "is not legal."

Based on the evidence before me, I find the landlord clearly communicated to the tenant when and why the tenant needed to begin paying rent directly to the landlord. I find the tenant received and understood the landlord's instructions, but chose to continue paying rent to SZ, not to the landlord.

On a balance of probabilities, 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, April 14, 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 \$2,000.00 in unpaid rent for December 2022, \$6,000.00 for January to March 2023, and \$933.33 for April 1-14, 2023 ( $2,000/30 \times 14 = 933.33$ ), for a total of \$8,933.33 ( $2,000 + 6,000 + 933.33$ ).

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 her application, I decline to award her the filing fee. As the landlord is successful in their application, I order the tenant to pay the \$100.00 filing fee the landlord paid to apply for dispute resolution.

The landlord is entitled to a monetary order for \$9,033.33, comprising \$8,933.33 for unpaid rent and \$100.00 for the filing fee.

### Conclusion

The tenant's application is dismissed.

The landlord is granted an order of possession, which will be effective two days after it is served on the tenant. The order of possession must be served on the tenant. The order of possession may be filed and enforced as an order of the Supreme Court of British Columbia.

The landlord is granted a monetary order in the amount of \$9,033.33 for unpaid rent and recovery of the filing fee. 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: May 01, 2023

---

Residential Tenancy Branch