



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      OPR, MNRL-S, FFL

### Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a residential tenancy dispute. On December 21, 2022 the landlord applied for:

- an order of possession for the rental unit, having issued a 10 Day Notice to End Tenancy, dated December 7, 2022 (the 10 Day Notice);
- a monetary order for unpaid rent, with the request to retain the security deposit; and
- recovery of the filing fee.

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

The landlord testified they served the Notice of Dispute Resolution Proceeding (NDRP) on the tenant on December 21, 2022 and provided a tracking number as noted on the cover page of the decision. I find the landlord served the tenant the NDRP and evidence in accordance with section 89 of the Act, and deem it received by the tenant on December 26, 2022, pursuant to section 90 of the Act.

### Preliminary Matter

The landlord testified that though the tenant vacated the rental unit on February 27 or 28, 2023, the landlord seeks an order of possession.

Issues to be Decided

- 1) Is the landlord entitled to an order of possession?
- 2) Is the landlord entitled to a monetary order for unpaid rent?
- 3) Is the landlord entitled to the filing fee?

Background and Evidence

The landlord provided the following particulars regarding the tenancy. It began January 1, 2022; rent was \$1,400.00, due on the first of the month; and the tenant paid a security deposit of \$700.00 which the landlord still holds in trust.

A copy of the 10 Day Notice is submitted as evidence. It is signed and dated by the landlord, 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 reason indicated on page 2 of the 10 Day Notice is that the tenant has failed to pay rent in the amount of \$4,500.00 due on December 1, 2022.

The landlord testified the 10 Day Notice was served on the tenant by registered mail on December 7, 2022, and provided a tracking number as noted on the cover page.

The landlord testified that rent was paid and owing as follows:

<b>Month</b>	<b>Rent</b>	<b>Rent paid</b>	<b>Monthly outstanding</b>
June 2022	1,400.00	1,300.00	100.00
July 2022	1,400.00	1,200.00	200.00
August 2022	1,400.00	0.00	1,400.00
September 2022	1,400.00	1,400.00	0.00
October 2022	1,400.00	1,400.00	0.00
November 2022	1,400.00	0.00	1,400.00
December 2022	1,400.00	0.00	1,400.00
January 2023	1,400.00	0.00	1,400.00
February 2023	1,400.00	0.00	1,400.00
<b>Total</b>			<b>\$7,300.00</b>

The landlord submitted as evidence a document called “Accounting of Unpaid Rent” indicating outstanding rent amounts for June 2022 through January 2023, and provided affirmed testimony on the rent owed for February 2023.

### Analysis

Section 46(1) permits a landlord to end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice. A notice under this section must comply with the form and content provisions of section 52.

Sections 46(4) and (5) of the Act state:

- (4) Within 5 days after receiving a notice under this section, the tenant may
  - (a) pay the overdue rent, in which case the notice has no effect, or
  - (b) dispute the notice by making an application for dispute resolution.
- (5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant
  - (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
  - (b) must vacate the rental unit to which the notice relates by that date.

Based on the landlord’s undisputed testimony and documentary evidence, I find the 10 Day Notice was served on the tenant by registered mail on December 7, 2022, in accordance with section 89 of the Act, and deem the Notice received by the tenant on December 12, 2022, pursuant to section 90 of the Act.

I find that the landlord’s 10 Day Notice meets the form and content requirements of section 52 of the Act, as it is signed and dated, gives the address of the rental unit, states an effective date of the notice, states the reason for ending the tenancy, and is in the approved form.

I find that the tenant did not pay the overdue rent or file an application for dispute resolution within 5 days of December 12, 2022, the timeline granted under section 46(4) of the Act. Accordingly, I find that the tenant is conclusively presumed under section 46(5) to have accepted that the tenancy ended on the corrected effective date of the 10 Day Notice, December 22, 2022.

Therefore, I find the landlord is entitled to an order of possession.

As the landlord testified that the tenant vacated the rental unit on February 27 or 28, 2023, I order that in accordance with section 68(2)(a) of the Act, the tenancy ended on February 28, 2023, the date the tenant vacated the unit.

The landlord provided affirmed undisputed testimony on the rent payments made by the tenant, and submitted documentary evidence in support.

I accept the landlord's undisputed affirmed testimony that the tenant owes outstanding rent totalling \$7,300.00.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. 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.

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

Unpaid rent	7,300.00
Filing fee	100.00
Security deposit	-700.00
<b>Owed to landlord</b>	<b>\$6,700.00</b>

### Conclusion

The landlord's application is granted.

The landlord is granted an order of possession which will be effective immediately.

The landlord is granted a monetary order in the amount of \$6,700.00 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 05, 2023

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Residential Tenancy Branch