



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

**Dispute Codes**      For the tenant: CNR, CNC, RP, LRE, OLC  
For the landlord: OPR-DR, MNR-DR, FF

### **Introduction**

This hearing was convened as the result of the cross applications for dispute resolution (application) of the parties seeking remedy under the Residential Tenancy Act (Act).

The tenant applied for:

- an order cancelling the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (Notice/10 Day Notice) issued by the landlords;
- an order cancelling the One Month Notice to End Tenancy for Cause (1 Month Notice) issued by the landlords;
- an order requiring the landlord to make repairs to the rental unit;
- an order suspending or setting conditions on the landlord's right to enter the rental unit; and
- an order requiring the landlord to comply with the Act, regulations, or tenancy agreement.

The landlord applied for:

- an order of possession of the rental unit pursuant to the 10 Day Notice served to the tenant;
- a monetary order for unpaid rent; and
- recovery of the cost of the filing fee.

The landlords attended the hearing; the tenant did not attend. The landlords were affirmed. The landlords confirmed that they received the tenant's application.

The landlords submitted they served the tenant with their application by registered mail. The landlord filed the Canada Post tracking number showing proof of service, verifying the date of service was January 18, 2023. I find the landlords submitted sufficient evidence to prove the tenant was served with the landlord's application as required under the Act.

The hearing proceeded in the tenant's absence and continued for 14 minutes. The landlords were provided the opportunity to present their evidence and submissions orally, refer to documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed the oral and written evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

### **Preliminary and Procedural Matter –**

Rules 7.3 and 7.4 of the Rules of Procedure provides as follows:

#### **7.3 Consequences of not attending the hearing**

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.

#### **7.4 Evidence must be presented**

Evidence must be presented by the party who submitted it, or by the party's agent.

If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

Accordingly, in the absence of any evidence or submissions from the tenant at the hearing, **I order their application dismissed, without leave to reapply.**

Additionally, the landlords stated that they will be granted an order of possession of the rental unit as the result of their application for an order ending the tenancy on an expedited basis, the hearing for which was conducted earlier the day of this hearing. The landlords were told by that arbitrator that they would be granted an order of possession of the rental unit and that they should inform me at this hearing.

Apart from that, the landlords stated the tenant vacated the rental unit on April 1, 2023.

### Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent, and recovery of the cost of the filing fee?

### Background and Evidence

The landlords submitted that this tenancy was formed on September 1, 2022 for a monthly rent of \$650, due on the first day of the month. The tenant did not pay a security deposit.

The landlord submitted evidence that on January 4, 2023, they served the tenant with the Notice, by personal service, listing a total unpaid rent of \$650 owed as of January 1, 2023. The effective vacancy date listed on the Notice was January 14, 2023. The Notice was filed into evidence.

The landlord submitted that the tenant failed to pay the rent listed on the Notice within 5 days, or at all, and did not pay any rent prior to vacating on April 1, 2023. The landlord said that as of the day of the hearing, the tenant owed a total of \$2,600 in unpaid monthly rent.

### Analysis

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so. When a tenant fails to pay the full rent due, a landlord may serve a tenant a notice seeking an end to the tenancy, pursuant to section 46(1) of the Act, as was the case here.

The Notice informed the tenant that they had five days of receipt of the Notice to file an application for dispute resolution with the RTB to dispute the Notice or to pay the rent in full; otherwise, the tenant is conclusively presumed to have accepted that the tenancy is ending and must move out of the rental unit by the effective move-out date listed on the Notice.

I find the landlord submitted sufficient and undisputed evidence to prove that the tenant was served a 10 Day Notice, that the tenant owed the unpaid rent listed and did not pay the outstanding rent within five days of service.

While the tenant filed an application, the tenant failed to attend the hearing to prove rent was not owed, and their application was dismissed.

I find that the landlord submitted sufficient, undisputed evidence to show that the tenant owes an outstanding balance of **\$2,600** in unpaid monthly rent, through the date of the hearing due to their failure to pay rent. I find the landlords have established a monetary claim in that amount. I also grant the landlords recovery of their filing fee of **\$100**, for a total monetary award of **\$2,700**.

I grant the landlords a monetary order for the amount of \$2,700. Should the tenant fail to pay the landlord this amount without delay after being served the order, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an order of that Court.

The tenant is **cautioned** that costs of such enforcement are recoverable from the tenant.

### Conclusion

The landlords' application for a monetary award for unpaid rent and recovery of the filing fee has been granted in the above terms.

The landlords' request for an order of possession was determined to be a moot point as the tenant vacated the rental unit on Application for Dispute Resolution, evidence, and April 1, 2023.

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

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: May 05, 2023

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Residential Tenancy Branch