



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      CNR, RR, RP, FFT

### Introduction

This reconvened hearing dealt with an application by the tenant pursuant to the Residential Tenancy Act (the “Act”) for the following orders:

- cancellation of the 10-Day Notice to End Tenancy for Unpaid Rent (the “10-Day Notice”) pursuant to section 46;
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided pursuant to section 27 and 65;
- an order for the landlord to make repairs to the rental unit pursuant to section 32 and 62; and,
- authorization to recover the filing fee paid for this application.

JH and EH (the “landlords”) appeared at the hearing. TC (the “tenant”) appeared at the hearing.

The parties advise that they served their application materials on the other side. Both parties acknowledge receipt of the other’s application materials without objection. Based on the mutual acknowledgments of the parties without objection, I find that pursuant to s. 71(2) of the Act that the parties were sufficiently served with the required documents for this hearing.

The parties were given full opportunity under oath to be heard, to present evidence and to make submissions. The parties confirmed they were not recording the hearing pursuant to Rule of Procedure 6.11.

### Preliminary Matters

At the outset of the hearing, the tenant requested that his applications be withdrawn. The landlords indicated that they did not consent to the withdrawal of the tenant's applications.

Rule of Procedure 5.0.1 states that when a tenant has applied to dispute a landlord's notice to end tenancy, the applicant tenant requires the written consent of the landlord to withdraw their application. Given that the landlord has not provided a written consent allowing the tenant to withdraw their application to dispute the landlord's 10-Day Notice, the tenant's application pursuant to section 46 of the Act is not withdrawn.

The tenant indicated that he did not wish to pursue his applications pursuant to section 27, 65, 32 and 62 of the Act. On that basis, I have dismissed those applications without leave to reapply.

The parties agree that EH and JH are landlords for the purposes of this tenancy. Pursuant to section 64 of the Act, I have amended the tenant's application to include EH as a landlord.

### Issue(s) to be Decided

1. Is the tenant entitled to an order cancelling the 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 parties not all of the 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.

The parties agreed that the tenancy initially started in March 2017; however, the most recent tenancy agreement is dated June 1, 2020. Monthly rent is \$7,000.00 payable on the first of each month. The Landlord collected a security deposit in the amount of \$3,500.00 from the tenant, which the landlord continues to hold in trust.

The landlords directed my attention to their evidence which includes a breakdown of the tenant's outstanding rent since 2021. The landlord testified that the tenant first fell behind on rent in October and November 2021. The landlords agreed to a payment arrangement with the tenant. The tenant made some efforts to comply with the payment arrangement.

However, in October 2022, the tenant again fell behind on rent and requested a payment arrangement to allow the tenant to get caught up. The landlord's agreed; however, the tenant failed to repay the outstanding rent for October 2022 and continued to fail to make rent payments. In February, the landlords asked the tenant for the unpaid rent and the tenant indicated that they were unable to pay it. As a result, the landlords issued the 10-Day Notice to the tenant in person on February 2, 2023.

EH testified that the tenant failed to make any rent payments from October 2022 until February 2023 when the Notice was issued. EH testified that when they issued the 10-Day Notice they issued it for \$42,400; however, this is incorrect. The actual amount of rent outstanding at that time was \$42,500.00. EH testified that since the 10-Day Notice was issued, the tenant has failed to pay rent in March and April 2023.

EH testified that the total rental arrears are \$56,500.00. EH drew my attention to their "Table of Outstanding Rent" which is submitted into evidence. The breakdown of outstanding rent is indicated as follows:

**Outstanding rent up to Febraury 2023**

2021	12500
2022	16000
2023	14000
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	42500

**Outstanding rent up to April 2023**

2021	12500
2022	16000
2023	28000
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	56500

The tenant testified they do not dispute any of the landlords' evidence and they accept that rent is outstanding in the amount of \$56,500.00.

After some discussion, the parties agreed that the tenancy ended on May 1, 2023, when the tenant vacated the rental property.

### Analysis

Based on the evidence and testimony of the parties, I find the tenant was served with the 10-Day Notice in accordance with the Act.

The undisputed evidence of EH is that they served the tenant with the 10-Day Notice because at that time, rental arrears were \$42,500.00. The 10-Day Notice is included in the evidence. While the parties agree that the 10-Day Notice was issued for an incorrect amount, I find that the Notice was given for a valid reason, namely, the non-payment of rent. I find the 10-Day Notice meets the form and content requirements of section 52 of the Act.

I find the landlord is entitled to an Order of Possession under section 55(1) of the Act. However, as the parties mutually agreed that the tenancy ended on May 1, 2023, no Order of Possession is necessary, and none has been granted.

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. The landlord's undisputed evidence is that rent is currently outstanding in the amount of \$56,500.00 and the tenant agreed with this. Therefore, the tenant is ordered to pay \$56,500.00 in unpaid rent to the landlord.

Regarding the Small Claims Limit and Monetary orders for unpaid rent resulting from a tenant's application to cancel a notice to end tenancy for unpaid rent, Policy Guideline 27 states the following at page 4:

Under the RTA and MHPTA, if a tenant disputes a landlord's notice to end tenancy for unpaid rent and the director upholds the notice to end tenancy, the director must grant a monetary order for the unpaid rent to the landlord. **The small claims monetary limit does not apply to monetary orders for unpaid rent that arise from a tenant's application to cancel a notice to end tenancy for unpaid rent.** In these instances, the order results automatically from a dismissal of a tenant's application disputing a notice to end tenancy and does not require a landlord to make an application claiming any amount.

**[My Emphasis Added]**

The landlord continues to hold the tenant's security deposit of \$3,500.00 in trust for the tenant. 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 Order.

As the tenant was unsuccessful in their application, they are not entitled to recover the filing fee paid for this application.

### Conclusion

I issue a Monetary Order in the landlords' favour in the amount of \$53,000.00 as follows:

Item	Amount
Rent Outstanding	\$56,500.00
Security Deposit	-\$3,500.00
<b>Total Monetary Order</b>	<b>\$53,000.00</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 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 12, 2023

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Residential Tenancy Branch