



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      CNR, CNC, LRE, OLC, FFT  
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 landlord’s 10 Day Notice to End Tenancy for Unpaid Rent (the 10-Day Notice) pursuant to sections 46;
- cancellation of the landlord’s One Month Notice to End Tenancy for Cause (the One Month Notice) pursuant to section 47;
- an order to suspend or set conditions on the landlord’s right to enter the rental unit pursuant to section 70(1);
- an order requiring the landlord to comply with the Act, regulation, or tenancy agreement pursuant to section 62; and,
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlords applied for:

- an Order of Possession based on unpaid rent pursuant to sections 46 and 55;
- a Monetary Order for unpaid rent pursuant to section 67; and,
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

DL, the landlord, appeared at the hearing.

The landlord testified that they served the tenant with the Notice of Dispute Resolution Proceeding Package in person on April 29, 2023.

Based on the uncontested affirmed testimony of the landlord, I find that the tenant was served with the Notice of Dispute Resolution Proceeding Package on April 29, 2023.

The landlord was cautioned that recording of the hearing is prohibited pursuant to Rule of Procedure 6.11. The landlord was given full opportunity under oath to be heard, to present evidence and to make submissions.

### Preliminary Matter

Although I waited until 11:40 a.m. to enable the tenant to connect with the teleconference hearing scheduled for 11:00 a.m., the tenant did not attend.

Rules of Procedure 7.3 and 7.4 discuss the consequences of a party not attending a hearing.

#### **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.

In accordance with the above, the hearing proceeded in the tenant's absence. I order the tenant's applications are dismissed without leave to reapply.

### Issues to be Decided

Are the landlords entitled to an order of possession and monetary order for unpaid rent?

### 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 submissions and my findings are set out below.

The landlord provided affirmed testimony that the tenancy commenced on October 1, 2022. Monthly rent is \$3,600.00 payable on the first of the month. The Landlord testified that at the outset of the tenancy, they collected a security deposit in the amount of \$1,800.00, a pet deposit in the amount of \$1,800.00 and an additional \$1,800.00 as a rent advance given the tenant's poor credit. The Landlord continues to hold the security deposit, pet deposit, and rent advance in trust for the tenant.

The landlord testified that they served the tenant with the 10-Day Notice on February 15, 2023, in person.

The landlord testified that the 10-Day Notice was issued because the tenant failed to pay rent that was due in November and December 2022 January and February 2023. The landlord testified that the amount listed on the 10-Day Notice was not accurate. The landlord testified that there was \$212.00 outstanding from November 2022, \$700.00 outstanding from December 2022, \$600.00 outstanding from January 2023 and \$3,000.00 outstanding from February 2023 for a total of \$4,512.00 at the time the 10-Day Notice was issued.

The landlord testified that since the 10-Day Notice was issued, they received partial rent payments in the amount of \$600.00 for March 2023 and \$750.00 for April 2023. No rent has been paid for May or June 2023. The landlord is seeking an order of possession and monetary order for unpaid rent.

### Analysis

I accept the undisputed testimony of the Landlord that the 10-Day Notice was served to the tenant in person on February 15, 2023.

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.

The landlord's undisputed affirmed testimony is that the tenant made partial rent payments in November, December 2022 and January, February 2023. Based on the landlord's affirmed testimony, I find on a balance of probabilities that the 10-Day 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.

Based on the above findings, the landlords are 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 application relates to a section 46 notice to end tenancy, the landlords are entitled to an order for unpaid rent under section 55(1.1) of the Act. Therefore, the tenant is ordered to pay the outstanding \$17,562.00 in unpaid rent to the landlords.

In accordance with the off-setting provisions of section 72 of the Act, I order the landlordw to retain the tenant's security, pet deposit, and rent advance payment in partial satisfaction of the monetary orders.

Since the landlords were successful in their application, they are entitled to recover the filing fee paid for this application from the tenant.

### Conclusion

The landlords are 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 \$12,262.00 as follows:

Item	Amount
Rent outstanding for November, December 2022 and January and February 2023	\$4,512.00
Rent due March, April, May, and June 2023	\$14,400.00
Rent paid March and April 2023	-\$1,350.00
Pet Deposit	-\$1,800.00
Security Deposit	-\$1,800.00
Advance Rent Payment	-\$1,800.00
Filing Fee	\$100.00
<b>Total Monetary Order</b>	<b>\$12,262.00</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 Act.

Dated: June 12, 2023

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Residential Tenancy Branch