



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

A matter regarding BCIMC REALTY CORPORATION C/O QUADREAL O/A  
METROPOLITAN TOWERS  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR, FFT / OPR-DR, MNR-DR, FFL

### Introduction

The hearing was convened following applications for dispute resolution (Applications) from both parties, which were crossed to be heard simultaneously.

The Tenant seeks the following:

- an order canceling a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) under section 46(4)(b) of the *Residential Tenancy Act* (the Act); and
- to recover the cost of the filing fee under section 72 of the Act.

The Landlord seeks the following:

- an Order of Possession after issuing the Notice under section 55(2)(b) of the Act;
- a Monetary Order for unpaid rent under sections 26 and 67 of the Act; and
- authorization to recover the filing fee for their Application from the Tenant under section 72 of the Act.

Counsel for the Landlord and an Agent for the Landlord called into this teleconference at the date and time set for the hearing of this matter. Although I waited until 11:18 A.M. to enable the Tenant to connect with this teleconference hearing scheduled for 11:00 A.M., the Tenant did not attend.

I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding. During the hearing, I also confirmed from the online teleconference system that the Landlord's representatives and I were the only parties who had called into this teleconference.

Rule 7.1 of the *Rules of Procedure* states that a hearing will commence at the scheduled time, unless otherwise set by the Arbitrator. Rule 7.3 of the *Rules of Procedure* states that if a party or their agent fails to attend the hearing, the arbitrator may conduct the hearing in the absence of that party or dismiss the application with or without leave to reapply. Accordingly, the hearing proceeded in the absence of the Tenant.

Counsel for the Landlord submitted that the Notice of Dispute Resolution Proceeding Package (Materials) were served on the Tenant via registered mail on May 24, 2023. The Landlord submitted copies of the Canada Post receipt and tracking number into evidence. I find that per section 89 of the Act that the Landlord's Materials were sufficiently served to the Tenant.

Counsel for the Landlord submitted that the Landlord did not receive the Tenant's Materials. The Landlord only learned the Tenant had disputed the Notice when an email from the Residential Tenancy Branch advised the Landlord's direct request application was scheduled for a participatory hearing following the Tenant's Application. Given this, I find that the Tenant's Materials were not served in accordance with section 89 of the Act.

#### 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 recover the filing fee for the Application from the Tenant?

#### Background and Evidence

The attending parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this Decision.

Counsel for the Landlord confirmed the following in respect of the tenancy:

- The tenancy began on September 7, 2022.
- Rent is \$3,060.00 per month due on the first day of the month.

- A security deposit of \$1,530.00 was paid by the Tenant which the Landlord still holds.
- There is a written tenancy agreement which was entered into evidence.
- It is unknown if the Tenant still occupies the rental unit as the Landlord has not heard from the Tenant for some time.

Counsel for the Landlord submitted as follows. Rent due February 1, 2023 was returned due to non-sufficient funds by the Tenant's bank. I was referred to a copy of the Tenant's account ledger which had been submitted into evidence by the Landlord.

The Tenant made an online credit card payment to the Landlord on February 5, 2023, however on May 4, 2023 the payment was reversed. I was referred to a copy of a letter to the Tenant from the Landlord dated May 4, 2023 which was entered into evidence by the Landlord. The letter confirms a payment in February for \$4,005.00 was disputed. The Letter requests the Tenant pay the balance on their account of \$3,615.00.

I was also referred to a Notice of Returned Cheque or Pre-Authorized Payment addressed to the Tenant which was entered into evidence by the Landlord. Payment of the balance owing was requested by money order.

The Notice was served May 5, 2023 by attaching to the door of the rental unit. Since the Notice was issued the Tenant has not paid any rent. The Landlord does not seek to amend their Application to include the rent due June 1 and July 1, 2023 and requests only an Order of Possession and a Monetary Order for \$3,615.00, per the Notice.

A copy of the Notice and a witnessed Proof of Service form (RTB-34) was entered into evidence by the Landlord. The Notice is dated May 5, 2023 and provides for outstanding rent of \$3,590.00 plus \$25.00 for a returned payment fee, as of February 1, 2023. The effective date of the Notice is May 15, 2023.

### Analysis

Section 26 of the Act requires tenants to pay rent on time unless they have a legal right to withhold some, or all, of the rent. Additionally, section 46(1) of the Act allows a landlord to end a tenancy if the tenant does not pay rent on time by issuing a 10 Day Notice to End Tenancy for Unpaid Rent.

I accept undisputed submissions of Landlord's counsel that rent due February 1, 2023 was not paid by the Tenant. Therefore, I find on a balance of probabilities that the Notice was given for a valid reason, namely, the non-payment of rent. I also find that the Notice complies with the form and content requirements of section 52 of the Act.

The Notice was served on May 5, 2023 by attaching to the door of the rental unit, therefore would have been deemed received on May 8, 2023, the third day after it is attached in accordance with section 90 of the Act. Section 53 of the Act provides that incorrect effective dates automatically changed which is of relevance here as the effective date of the Notice should read May 18, 2023 instead of May 15, 2032.

I accept undisputed submissions of Landlord's counsel that the outstanding rent was not paid in full within five days of the Tenant receiving the Notice. Had this been done it would have meant the Notice has no effect in accordance with section 46(4)(a) of the Act. Though the Tenant disputed the Notice on May 11, 2023, they did not serve their Application Materials to the Landlord or attend the hearing.

Based on the above findings, the Landlord's Application is granted and the Tenant's Application is dismissed without leave to reapply. The Landlord is issued an Order of Possession under section 55(2)(b) of the Act. As the deemed effective date of the Notice has passed, I grant the Landlord an Order of Possession effective two days after service.

The Landlord is entitled to an order for unpaid rent under section 55(1.1) of the Act. Therefore, the Tenant is ordered to pay \$3,615.00 in unpaid rent to the Landlord. The Landlord's counsel confirmed the balance is made up partially of late fees. I note the Tenancy Agreement at paragraph 3 provides for a charge of \$25.00 per late payment which is in accordance with section 7 of the *Residential Tenancy Regulation*.

As the Landlord has been successful in their Application, I order the Tenant to pay the Landlord the amount of \$100.00 in respect of the filing fee in accordance with section 72 of the Act.

In accordance with the offsetting provision of section 72 of the Act, the Landlord may retain the Tenant's security deposit of \$1,530.00 in partial satisfaction of the payment order.

A Monetary Order for the remaining amount is attached to this Decision and must be served on the Tenant.

### Conclusion

The Landlord's Application is granted. The Tenant's Application is dismissed without leave to reapply.

The Landlord is issued an Order of Possession. 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. If the Tenant does not comply with the Order of Possession, it may be filed by the Landlord with the Supreme Court of British Columbia and enforced as an order of that court.

The Landlord is issued a Monetary Order. A copy of the Monetary Order is attached to this Decision and must be served on the Tenant. It is the Landlord's obligation to serve the Monetary Order on the Tenant. The Monetary Order is enforceable in the Provincial Court of British Columbia (Small Claims Court). The Order is summarized below.

<b>Item</b>	<b>Amount</b>
Unpaid rent	\$3,615.00
Filing fee	\$100.00
Less: security deposit	(\$1,530.00)
<b>Total</b>	<b>\$2,185.00</b>

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: July 04, 2023

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Residential Tenancy Branch