



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      OPR-DR, MNR-DR, FFL  
CNR, MNRT, PSF, LRE, OLC

### Introduction

This hearing dealt with an application filed by both the landlords and the tenant pursuant to the Residential Tenancy Act (the “Act”):

The landlords applied for:

- an Order of Possession based on unpaid rent pursuant to sections 46 and 55 of the Act
- a Monetary Order for unpaid rent pursuant to section 67 of the Act
- authorization to recover the filing fee for this application from the tenant pursuant to section 72 of 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 and 55 of the Act
- a monetary order for the cost of emergency repairs to the manufactured home site pursuant to sections 33 and 67 of the Act
- an order for the landlord to provide services or facilities required by law pursuant to section 27 and 65 (f) of the Act
- an order to suspend or set conditions on the landlord’s right to enter the rental unit pursuant to section 70(1) of the Act
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62 of the Act

SB and RB (the “Landlords”) appeared at the hearing. JF appeared as Agent for the Landlords. CD appeared as and advocate for the tenant who did not appear at the hearing.

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

Service of the Notice of Dispute Resolution Proceeding Packages and Evidence

JF submitted that the Landlords served the tenant with their Notice of Dispute Resolution Proceeding Package on May 18, 2023, by registered mail and their evidence on June 16, 2023, by registered mail. In support of this, the Landlords provided Canada Post Receipts containing Canada Post Tracking Numbers.

Pursuant to section 90 of the Act a document served in accordance with section 89 of the Act is deemed to be received if given or served by registered mail on the fifth day after it is mailed. In this case, the tenant is deemed to have received the materials on May 23, 2023, and June 21, 2023, respectively and in accordance with section 90(a) of the Act.

JF submitted that the Landlords were not served with the Tenant's Notice of Dispute Resolution Proceeding Package.

CD submitted that they were unaware that the tenant made their own application and indicated that they were only representing the tenant with regard to the Landlords' application. Therefore, CD submitted that they are unable to speak to the tenant's application or service of the same.

Section 59(3) of the Act requires that a person who makes an application for dispute resolution must give a copy of the application to the other party within 3 days of making it.

Based on the uncontested affirmed testimony of JF, I find that that Tenant did not serve the Landlords with their Notice of Dispute Resolution Proceeding Package. The parties have a right to a fair hearing and the Landlords would not be aware of the full claim against them without having been served the Notice of Dispute Resolution Proceeding Package as required by the Act. I therefore dismiss the tenant's application in its entirety, **with leave to reapply**. Leave to reapply does not extend any applicable time limitation deadlines.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession based on unpaid rent?

Is the landlord entitled to a Monetary Order for unpaid rent?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all 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.

Evidence was provided showing that the tenancy commenced on January 15, 2023, by way of written agreement. According to the tenancy agreement which is submitted into evidence monthly rent was \$2,000.00 payable on the fifteenth of the month. The Landlord collected a security deposit in the amount of \$1,000.00 and a pet deposit which was agreed to be paid in installments of \$250.00 on January 1<sup>st</sup>, February 1<sup>st</sup>, March 1<sup>st</sup>, and April 1<sup>st</sup>, 2023. However, the Landlords provided evidence showing that only \$500.00 toward the pet deposit has been paid. The Tenancy Agreement is submitted into evidence.

JF referred me to a document titled Accounting of unpaid rent which is submitted into evidence. SB testified that in February 2023, the tenant's rent was late. At this time, at the tenant's request, the Landlords agreed to change the date rent is due to the first of the month. SB directed my attention to this change which has been initialed by three people on the tenancy agreement. SB also directed my attention to an Addendum document dated March 9<sup>th</sup>, 2023, signed by the tenant and Landlords which indicates that from April 1<sup>st</sup>, 2023, rent will be due on the first of the month.

JF testified that the Landlord served the 10-Day Notice to the Tenant on May 2, 2023, by attaching it to the door of the rental property. The 10-Day Notice is submitted into evidence and indicates that it was issued because the tenant failed to pay rent in the amount of \$1,000.00 which was due on May 1<sup>st</sup>, 2023.

SB testified that the Tenant made two separate payments each in the amount of \$500.00 on May 9<sup>th</sup>, 2023, and May 17<sup>th</sup>, 2023. SB noted that the outstanding rent was not paid in full within 5 days of the 10-Day Notice having been issued. SB testified that the tenant has not made any rent payments for the months of June or July 2023 and that rent is currently outstanding in the amount of \$4,000.00.

SB testified that the Landlords are seeking an Order of Possession and Monetary Order for unpaid rent.

In response to SB and JF's testimony, CD testified that the Tenant paid the rent that was outstanding for the month of May. CD testified that this application relates only to the month of May. CD testified that they cannot speak to the months of June and July as their client has not advised them about those months. CD testified that they are not aware of the dates of the two rent payments in May; however, they are aware that the rent for May has been paid and that it was paid late.

### Analysis

The uncontested evidence of the Landlords is that the 10-Day Notice was issued to the Tenant on May 2, 2023, by attaching it to the door of the rental property. Pursuant to section 90 of the Act a document served in accordance with section 89 of the Act is deemed to be received if given or served by attaching to a door, on the third day after it is attached. In this case, the Tenant is deemed to have received the materials on May 5<sup>th</sup>, 2023, in accordance with section 90(c) of the Act.

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 permits a landlord to end a tenancy if rent is unpaid on any day after the day it is due by issuing a *10 Day Notice to End Tenancy for Unpaid Rent*. A notice to end tenancy given under this section must comply with section 52 (form and content) of the Act. Upon receipt of a notice to end tenancy issued under s. 46 of the Act, a tenant has 5 days to either pay the overdue rent or file an application disputing the notice as per s. 46(4).

I accept SW's undisputed testimony that the 10-Day Notice was issued because the tenant did not pay rent in the amount of \$1,000.00. Therefore, I find on a balance of probabilities that the Notice was issued for a valid reason, namely, the non-payment of rent. While the Tenant has since paid the rent that was outstanding since the 10-Day Notice was issued, the uncontested evidence of the Landlord's support that they did not do so within the required 5 days under section 46(4).

I have reviewed the 10-Day Notice and I find that it complies with the form and content requirements of section 52. As previously stated, the Tenant's application to cancel the 10-Day Notice is dismissed.

Based on the foregoing, 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 landlord is entitled to an order for unpaid rent under section 55(1.1) of the Act. Therefore, the tenant is ordered to pay the outstanding \$4,000.00 in unpaid rent to the landlord.

The Landlord's are entitled to authorization to recover the filing fee paid for this application pursuant to section 72 of the Act.

The Landlords continues to hold the tenant's security deposit of **\$1,000.00** and pet deposit of **\$500.00** in the amount totalling **\$1,500.00**. In accordance with the off-setting provisions of section 72 of the Act, I order the Landlords to retain the tenant's security and pet deposit in partial satisfaction of the monetary orders.

### Conclusion

The landlord is 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 \$4,100.00 as follows:

Item	Amount
Rent due June and July 2022	\$4,000.00
Security Deposit	-\$1,000.00
Pet Deposit	-\$500.00
Filing Fee	\$100.00
<b>Total Monetary Order</b>	<b>\$2,600.00</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 *Residential Tenancy Act*.

Dated: July 10, 2023

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Residential Tenancy Branch