



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

CNR, PSF  
OPR-DR, MNRL-S, MNR-DR, FFL

### Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (“10 Day Notice”) pursuant to section 46.
- An order requiring the landlord to provide services or facilities required by the tenancy agreement or law pursuant to section 62(3).

This hearing also dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- An Order of Possession under a 10-Day Notice to End Tenancy for Unpaid Rent and Utilities (“10 Day Notice”) pursuant to sections 46 and 55.
- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* (“*Regulation*”) or tenancy agreement pursuant to section 67 of the *Act*.
- Authorization to retain all or a portion of the tenant’s security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*.
- An order requiring the tenant to reimburse the landlord for the filing fee pursuant to section 72.

The landlord attended and had opportunity to provide affirmed testimony, present evidence and make submissions. The hearing process was explained.

*1. Preliminary Issue - Service of Notice of Dispute Resolution Proceeding (Proceeding Package) and Evidence*

I find that the tenant was served on June 7, 2023, by registered mail in accordance with section 89(1) of the Act, the fifth day after the registered mailing. The landlord provided a copy of the Canada Post Customer Receipt containing the tracking number to confirm this service.

*2. Preliminary Issue - Attendance of Tenant*

The tenant did not appear at the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional 30 minutes to allow the tenant the opportunity to call. The teleconference system indicated only the landlord and I had called into the hearing. I confirmed the correct call-in number and participant code for the tenant had been provided.

Rule 7.3 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 reapply.

As the tenant did not attend the hearing and in the absence of any evidence or submissions on behalf of the tenant, I order the tenant's application dismissed in its entirety without leave to reapply.

*3. Preliminary Issue - Amendment by Landlord – Security Deposit*

The landlord requested an amendment to the landlord's application, so the landlord is authorized to apply the security deposit to any monetary award granted pursuant to section 72.

The landlord testified the tenant paid the landlord a security deposit of \$670.00 at the beginning of the tenancy which the landlord holds. The tenant has not given the landlord permission to apply the security deposit to outstanding rent.

Section 64(3)(c) and Rule 4 of the *Rules of Procedure* allow for an amendment of an application at the hearing. Rule 4 states the amendment may be allowed in circumstances that can be anticipated; if sought at the hearing, such an amendment need not be submitted or served.

I find the tenant could reasonably anticipate the landlord's claim would be amended to include a request authorizing the landlord to apply the security deposit to a monetary award for outstanding rent. The amendment would not be prejudicial to the respondent.

Pursuant to my authority under section 64(3)(c) of the *Act*, I amended the landlord's application to allow the landlord to request that the security deposit be applied to the award.

#### *4. Preliminary Issue - Amendment – Rent and Utilities*

The landlord testified that since the Application for Dispute Resolution was filed, the tenant has not paid rent for the months of June and July 2023. The tenant has also not paid utilities for which \$350.00 is owing. The landlord requested an amendment so their claim in accordingly increased to reflect the subsequently accrued amounts.

Pursuant to my authority under section 64(3)(c) of the *Act*, I amended the landlord's application to allow the landlord to request an award for outstanding rent for the additional two months and the utilities as claimed.

#### *5. Summary: Amended Claim – Landlord*

ITEM	AMOUNT
Outstanding rent May 2023	\$1,377.00
Outstanding rent June 2023	\$1,377.00
Outstanding rent July 2023	\$1,377.00
Outstanding utilities	\$350.00
Filing fee	\$100.00
(Less security deposit)	(\$670.00)
<b>TOTAL</b>	<b>\$3,911.00</b>

#### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession and a Monetary Order?

#### Background and Evidence

I have reviewed all evidence but will refer only to what I find relevant for my decision.

Evidence was provided showing that this tenancy began on November 1, 2021, with a monthly rent of \$1,377.00, due on first day of the month, with a security deposit in the amount of \$670.00.

The landlord issued a 10 Day Notice dated May 16, 2023, for \$1,377.00 in unpaid rent and \$92.47 in unpaid utilities. The Notice provides that the tenant had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the stated effective vacancy date of May 26, 2023.

The landlord submitted a copy of the 10 Day Notice which is in the standard RTB form. The Notice complies with section 51.

The 10 Day Notice was served to the tenant in person on May 16, 2023, and by registered mail on May 19, 2023. The landlord testified to service and submitted a copy of a witnessed Proof of Service Notice to End Tenancy form.

I have dismissed without leave to reapply the tenant's application to dispute the 10 Day Notice.

The landlord testified the tenant did not pay the outstanding rent and utilities after the Notice was served. The tenant has not paid rent and utilities for 3 months and continues to live in the unit

The landlord request a Monetary Order as follows:

ITEM	AMOUNT
Outstanding rent May 2023	\$1,377.00
Outstanding rent June 2023	\$1,377.00
Outstanding rent July 2023	\$1,377.00
Outstanding utilities	\$350.00
Filing fee	\$100.00
(Less security deposit)	(\$670.00)
<b>TOTAL</b>	<b>\$3,911.00</b>

### Analysis

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

### Is the landlord entitled to an Order of Possession based on the 10 Day Notice?

Section 46 of the Act states that upon receipt of a 10 Day Notice the tenant must, within five days, either pay the full amount of the arrears as indicated on the 10 Day Notice or

dispute the 10 Day Notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does not pay the arrears, or dispute the 10 Day Notice, they are conclusively presumed to have accepted the end of the tenancy under section 46(5).

I find that the 10 Day Notice was served to the tenant on May 16, 2023, and that the tenant had until May 21, 2023, to dispute the 10 Day Notice or to pay the full amount of the arrears.

The 10 Day Notice is in the standard RTB form and complies with the form and content requirements of the Act (section 51).

Based on the evidence before me, I find the tenant failed to pay any rent within five days of receiving the 10 Day Notice and I have dismissed the tenant's application to cancel the Notice submitted on May 26, 2023.

In accordance with section 46(5) of the Act, I find the tenant is conclusively presumed to have accepted the end of this tenancy on May 26, 2023, the effective date on the 10 Day Notice. In this case, the tenant and anyone on the premises were required to vacate the premises by May 26, 2023.

The landlord has provided credible evidence which I accept in its entirety.

Therefore, as the tenant remains in occupation of the unit and has not paid rent or utilities for an additional 2 months, I find that the landlord is entitled to an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) under sections 46 and 55 of the Act.

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

Section 26 of the Act states that a tenant must pay rent to the landlord, regardless of whether the landlord complies with the Act, regulations or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the Act.

Based on the credible and reliable evidence before me, I find that the landlord has established a claim for unpaid rent owing for May, July and July 2023 as well as for outstanding utilities of \$350.00.

Section 67 of the Act states that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

Therefore, I find the landlord is entitled to a Monetary Order for unpaid rent and outstanding utilities as claimed under section 67 of the Act.

As the landlord was successful in their application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application under section 72 of the Act.

The landlord is authorized to apply the security deposit to the award.

I grant the landlord a Monetary Order of \$3,911.00 as follows:

ITEM	AMOUNT
Outstanding rent May 2023	\$1,377.00
Outstanding rent June 2023	\$1,377.00
Outstanding rent July 2023	\$1,377.00
Outstanding utilities	\$350.00
Filing fee	\$100.00
(Less security deposit)	(\$670.00)
<b>TOTAL Monetary Order</b>	<b>\$3,911.00</b>

### Conclusion

I grant an Order of Possession to the landlord **effective two (2) days after service of this Order on the tenant(s)**. Should the tenant(s) or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I grant the landlord a Monetary Order in the amount of **\$3,911.00** under the following terms:

ITEM	AMOUNT
Outstanding rent May 2023	\$1,377.00
Outstanding rent June 2023	\$1,377.00
Outstanding rent July 2023	\$1,377.00
Outstanding utilities	\$350.00
Filing fee	\$100.00
(Less security deposit)	(\$670.00)
<b>TOTAL</b>	<b>\$3,911.00</b>

The landlord is provided with this Order in the above terms and the tenant(s) must be served with **this Order** as soon as possible. Should the tenant(s) 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 24, 2023

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Residential Tenancy Branch