



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

A matter regarding SIKHMANI HOLDINGS INC  
and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes**

Tenant: CNR

Landlord: OPU-DR, OPU, MNR-DR, MNRL, FFL

### **Introduction**

This hearing concerned the Tenant's application pursuant to the *Residential Tenancy Act* (the "Act") to cancel a 10 Day Notice to End Tenancy for unpaid rent issued June 28, 2023. The Landlord filed two cross-applications for an Order of Possession based upon the 10 Day Notice issued June 28, 2023; a monetary award for unpaid rent; a monetary order for unpaid utilities, and, reimbursement from the Tenant of the filing fees for each application.

### **Issues to be Decided**

Is the Tenant entitled to cancel the Landlord's 10 Day Notice be cancelled? If not, is the Landlord entitled to an Order of Possession?

Is the Landlord entitled to a monetary award for unpaid rent?

Is the Landlord entitled to recover unpaid utilities and/or the filing fee for this application from the Tenants?

### **Background and Evidence**

While the Tenant attended the hearing by way of conference call, the Landlord did not. The Tenant who attended the hearing was given a full opportunity to be heard, to present testimony, to make submissions and to call witnesses.

Rule 7.3 of the Rules of Procedure provides as follows:

**7.3 Commencement of the hearing:** The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may

conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

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

Evidence was provided showing that this tenancy began on November 1, 2022 on a month-to-month basis. The monthly rent is \$2,600.00, due on the first day of the month. A security deposit in the amount of \$1,300.00 was collected by the Landlord at the commencement of the rental agreement.

The Landlord issued a 10 Day Notice to End Tenancy for unpaid rent and utilities on June 28, 2023, for unpaid rent in the amount of \$2,600.00 due as of June 1, 2023. The effective date of the Notice was not completed on the Notice submitted by the Tenant. On the Landlord's cross-application, the Notice issued June 28, 2023 bears an effective date of July 18, 2023. The Notice was served to the Tenant by posting on the door of the rental unit on June 28, 2023. The Tenant stated she received the Notice on June 28, 2023. A copy of the Notice was submitted by the Tenant into evidence. The Landlord also submitted a copy of the Notice with its application.

The Landlord's cross-application included documents requesting utilities in the amount of \$526.89 for electric services and \$273.42 for natural gas. The Tenant testified that she thought she had paid the utilities for June, 2023 but denied that she had received from the Landlord any utility bills or written request for payment of utilities for July, August or September, 2023.

The Tenant admitted that she had not paid rent for June, July, August or September 2023. The Tenant testified that she had informed the Landlord she was moving out on October 1, 2023. The Tenant testified she did not enter into a mutual agreement to end the tenancy or otherwise provide notice to the Landlord in writing that she was moving out on October 1, 2023.

### Analysis

**Is the Tenant entitled to Cancel the Landlord's 10 Day Notice? If not, is the Landlord entitled to an Order of Possession? Is the Landlord entitled to a Monetary Order for Unpaid Rent?**

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(s) do 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 issued June 28, 2023 was duly served to the Tenant by posting on the door of the rental unit and the Tenant stated in her application for dispute resolution that she received the Notice on June 28, 2023. The Tenant timely applied on July 2, 2023 to dispute the 10 Day Notice.

The Tenant testified that she had not paid rent for June, July, August and September, 2023. I find that the Notice complies with section 52 of the Act. I further find that the Tenant's uncontroverted testimony substantiates the issuance of the 10 Day Notice by the Landlord.

Therefore, I find the Tenant has failed to pay the rent owing within five days of service of the Notice. Thus, the tenancy has ended, and the Landlord is entitled to an order of possession.

**Is the Landlord entitled to a monetary award for unpaid rent?**

Section 26 of the Act requires a tenant to pay rent the day it is due unless the tenant has a legal right to withhold some or all of the rent.

Section 55(1.1) provides that where a tenant has applied for dispute resolution to dispute a notice to end tenancy for unpaid rent, and where (a) the notice complies with section 52 and (b) the notice is for non-payment of rent, the director must grant an order requiring payment of the unpaid rent.

Section 53 of the Act provides that if the Notice provides an incorrect effective date, the effective date is deemed the earliest date that would comply. In this case, I find the Notice complies with section 52 of the Act with a deemed effective date that complies with the Act.

I find that based upon the Tenant's affirmed admissions, the Tenant did not pay rent for the months of June, July, August and September, 2023, and had no reason to withhold rent under the Act. I dismiss the Tenant's application to cancel the Landlord's 10 Day Notice and the Landlord is entitled to a monetary order for that unpaid rent.

**Is the Landlord entitled to recover unpaid utilities and/or the filing fee for this application from the Tenant?**

In its two cross-applications, the Landlord requested unpaid utilities as well as reimbursement of the filing fees.

I decline to consider either of the Landlord's two cross-applications requesting unpaid utilities and the filing fees and make no findings regarding either application. I dismiss the Landlord's applications without leave to reapply.

### Conclusion

The Tenant's application for cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) under sections 46 and 55 of the Act is dismissed without leave to reapply, and the tenancy has ended as of the date of this Decision.

I grant an Order of Possession to the Landlord effective **two (2) days after service of this Order** on the Tenants. Should the Tenant or any occupant 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 **\$10,400.00** for unpaid rent in the amount of \$2,600.00 per month for June, July, August and September, 2023.

The Landlord is provided with this Order in the above terms and 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: September 27, 2023

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Residential Tenancy Branch