



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

### Dispute Codes

Tenant: CNL, OLC, FFT  
Landlord: OPR, OPL, MNRL, FFL

### Introduction

On May 19, 2023, the Tenant filed their Application at the Residential Tenancy Branch:

- to dispute the Two-Month Notice to End Tenancy for Landlord's Use of Property (the "Two-Month Notice");
- seeking the Landlord's compliance with the legislation and/or tenancy agreement;
- for reimbursement of the Application filing fee.

On May 30, the Landlord submitted their Application:

- seeking an order of possession in line with the Two-Month Notice;
- for reimbursement of the Application filing fee.

The Landlord's Application was crossed to that of the Tenant that was already in place. On August 22, 2023, the Landlord amended their Application to include an order of possession in line with the 10-Day Notice to End Tenancy for Unpaid Rent they served to the Tenant on August 2, 2023. On August 25, the Landlord amended their Application to recover the money for unpaid rent.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the "Act") on September 12, 2023. The Landlord attended the scheduled hearing; the Tenant did not attend.

The Landlord confirmed they received each Notice of Dispute Resolution Proceeding, served to them by the Tenant. The Landlord confirmed they

#### Preliminary Matter – Tenant's attendance

The Landlord at the outset of the hearing stated they did not receive the Notice of Dispute Resolution Proceeding from the Tenant. They received the Tenant's handwritten application form to the Residential Tenancy Branch instead of the Notice of Dispute Resolution Proceeding that fully informed the Landlord about this hearing date and time and other required information. The Landlord received no evidence from the Tenant associated with the Tenant's own Application.

From this, I conclude the Tenant did not properly serve the Notice of Dispute Resolution Proceeding to the Landlord for their Application to the Residential Tenancy Branch.

Additionally, the Tenant did not attend the hearing, although I left the teleconference hearing open until 9:43am to enable the Tenant to call in to this teleconference hearing scheduled for 9:30am. I confirmed correct call-in numbers and participant codes were provided in the Notice of Dispute Resolution Proceeding generated when the Tenant applied. I also confirmed throughout the duration of the call that the Tenant was not in attendance.

Rule 7.3 of the *Residential Tenancy Branch Rules of Procedure* provides that if a party or their agent fails to attend the hearing, an arbitrator may conduct the hearing in the absence of that party or dismiss the application without leave to reapply. On this basis, I dismiss the Tenant's Application in its entirety, without leave to reapply.

#### Preliminary Matter – Landlord's Notice of Dispute Resolution Proceeding to the Tenant

The Landlord presented that they notified the Tenant of their Notice of Dispute Resolution Proceeding, as well as two consecutive amendments, via registered mail. The Landlord provided images of each associated registered mail label showing the tracking number thereof.

From this evidence, I find the Landlord informed the Tenant fully about each application they made to the Residential Tenancy Branch, and provided the required evidence. On this basis, I give the Landlord's evidence full consideration in this matter.

### Issues to be Decided

Is the Landlord entitled to an Order of Possession of the rental unit, pursuant to s. 55 of the *Act*?

Is the Landlord entitled to compensation for rent amounts owing, pursuant to s. 55 of the *Act*?

Is the Landlord entitled to reimbursement for the Application fee for either of their Applications, pursuant to s. 72 of the *Act*?

### Background and Evidence

I have reviewed all evidence and submissions before me. Only the evidence and submissions relevant to my conclusion, and the outcome of this hearing, are set out in this decision.

The Landlord on their Application provided that the tenancy started on May 1, 2019. The Landlord's indication is that rent was \$1,300 per month, and the Tenant paid a security deposit of \$650.

The Landlord issued the 10-Day Notice on August 2, 2023. The Landlord provided a copy of this document in their evidence. The full 3-page document on page 2 shows the Landlord's indication that the Tenant failed to pay the rent amount of \$1,325 on August 1, 2023 as required by the agreement. The 10-Day Notice gives the end-of-tenancy date as August 12, 2023.

The Landlord in the hearing provided that the Tenant did not pay the following month's rent for September 2023. The Landlord provided another amount of \$1,325 as owing for September.

The Landlord presented that the Tenant did not pay the required rent within the timeline set out in the 10-Day Notice. The Landlord was not aware if the Tenant applied to dispute the 10-Day Notice within the required timeline as set out on that document.

## Analysis

The *Act* s. 26 requires a tenant to pay rent when it is due under the tenancy agreement whether or not a landlord complies with the *Act*, the regulations or the tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the rent.

The *Act* s. 46(1) provides authority for a landlord to issue a notice to end a tenancy “if rent is unpaid on any day after the day it is due.” A landlord may issue a notice to end the tenancy effective “on a date that is not earlier than 10 days after the date the tenant receives the notice.”

In this dispute the Landlord issued the 10-Day Notice to the Tenant on August 2, 2023. The Tenant did not challenge the 10-Day Notice through an application to the Residential Tenancy Branch within the five-day timeline as set out on that document.

The *Act* s. 46(5) provides that, if a tenant who received a 10-day Notice does not pay rent or make an application for dispute resolution, that tenant is conclusively presumed to have accepted that the tenancy ends on the effective end-of-tenancy date as set out on that 10-Day Notice.

The *Act* s. 26 applies, and the Tenant had no authorization in the form of an order from the Residential Tenancy Branch order to withhold payment of rent. Nor did they have authority from the tenancy agreement. I find the Tenant breached s. 26 of the *Act*, and further breached s. 46(4) by not paying the full amount of the overdue rent within the time granted for that.

Under s. 55 of the *Act*, a landlord may request an order of possession in this situation. Under s. 55(4), I grant that order of possession effective two days after its service to the Tenant by the Landlord.

I grant the Landlord a Monetary Order for the amount of \$2,600 as per s. 55(4)(b) of the *Act*. This reflects the amount of rent that the Landlord provided on the Application to the Residential Tenancy Branch.

As per s. 72(2) of the *Act*, I grant the Landlord to keep the entirety of the \$650 security deposit paid to them by the Tenant at the start of the tenancy. I grant a Monetary Order for the remaining amount, \$1,950, and add \$100 to that Monetary Order for the Landlord’s success on their Application.

Given that the tenancy is ending by reason of the 10-Day Notice, the validity of the separate Two-Month Notice issued by the Landlord is not at issue. I order that document cancelled in its entirety.

### Conclusion

For the reasons outlined above, I dismiss the Tenant's Application for cancellation of the Two-Month Notice, without leave to reapply. I dismiss the other grounds on their Application, without leave to reapply.

I grant an Order of Possession to the Landlord, effective TWO DAYS after they serve it to the Tenant. Should the Tenant fail to comply with this Order, the Landlord may file this Order with the Supreme Court of British Columbia where it may be enforced as an Order of that Court.

I order the Tenant to pay the Landlord the amount of \$2,050, pursuant to s. 55(4) of the *Act*. I grant the Landlord a monetary order for this amount. The Landlord may file this monetary order in the Provincial Court (Small Claims) where it will be enforced as an Order of that Court.

I make this decision on the authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: September 13, 2023

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Residential Tenancy Branch