



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

### **Introduction**

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This hearing dealt with the Tenant's and Landlord's Applications under the *Residential Tenancy Act* (the Act).

The Tenant applied to cancel the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice), to restrict the landlord's right to enter the rental unit, and to recover the filing fee for this application from the landlord.

The Landlord applied for an Order of Possession of the rental unit, for a Monetary Order for unpaid rent, and to recover the filing fee from the tenant.

The Landlord acknowledged receiving the Tenant's hearing package and evidence on August 25, 2023. Based on the Landlord's undisputed testimony and the proof of service documents they submitted as evidence, I find that the Landlord's hearing package and evidence are deemed served to the Tenant on August 28, 2023, 5 days after being sent by registered mail.

### **Issues to be Decided**

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Should the landlord's 10 Day Notice be cancelled?

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a Monetary Award for Unpaid Rent or Utilities?

Should the landlord's right to enter the rental unit be suspended or restricted?

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

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

## **Facts and Analysis**

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This tenancy began January 15, 2022, and the monthly rent is \$2,448.00 due the first day of the month, with a security deposit of \$1200.00.

The landlord testified as follows. On August 1, 2023, the Tenant paid \$2,000.00 for rent. The Landlord asked the Tenant to pay the remaining \$448.00 in rent on August 2, 2023. The Tenant told the Landlord that their bank accounts had been frozen by the CRA because of problems with their late husband's taxes. The Tenant told the Landlord they were trying to sort out the issue, and would pay the outstanding rent when they had access to their accounts. The Landlord followed up with the Tenant about the outstanding rent. The Tenant did not respond to the Landlord's communications about the rent after August 2, 2023.

The Landlord issued a notice to the Tenant to enter the rental unit, and the parties agreed on the date and time. The Landlord went to the rental unit with a witness on August 6, 2023 at 11:00am (the inspection). The Tenant asked the witness to remain outside the rental unit. The Landlord completed the inspection and tried to talk about the unpaid rent with the Tenant. The Tenant refused to discuss the unpaid rent and became angry with the Landlord. At the end of the inspection on August 6, 2023, the Landlord served the Tenant with the 10 Day Notice in person.

The Tenant applied to cancel the 10 Day Notice. The Tenant did not pay the outstanding rent to the Landlord. The Tenant did not pay rent to the Landlord on September 1, 2023. The Tenant did not move out of the rental unit. The total arrears for unpaid rent are \$2,896.00.

The Landlord provided documentary evidence to support their claims.

### **Should the landlord's 10 Day Notice be cancelled?**

Based on the Landlord's undisputed testimony and supporting evidence, I find the tenant breached the Act by not paying rent in August 2023. Under section 26 of the Act, payment of rent is a material term of the tenancy agreement, so rent must be paid regardless of the personal circumstances of the tenant.

For these reasons I find that the Landlord had a valid reason to issue the 10 Day Notice under section 46 of the Act. The tenant's application to cancel the 10 Day Notice is dismissed.

### **Is the landlord entitled to an Order of Possession?**

I find the 10 Day Notice issued by the Landlord meets the requirements for form and content under section 52 of the Act. I find the 10 Day Notice was given for valid reasons under the Act, and the landlord is entitled to an Order of Possession.

**Is the landlord entitled to a Monetary Award for Unpaid Rent or Utilities?**

I find the tenant failed to pay \$448.00 in rent in August 2023. I find the tenant failed to pay \$2,448.00 for rent in September 2023. I find that the Landlord is entitled to a Monetary Order for unpaid rent of \$2,896.00 under section 55(1.1) of the Act.

**Should the landlord's right to enter the rental unit be suspended or restricted?**

This tenancy is ending, so I dismiss the Tenant's application to restrict the Landlord's right to enter the rental unit without leave to re-apply.

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

As the tenant was not successful in this application, the tenant's application to recover the filing fee for this application from the landlord under section 72 of the Act is dismissed, without leave to reapply.

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

As the landlord was successful in this application, I find that the landlord is entitled to recover the filing fee from the tenant under section 72 of the Act.

## **Conclusion**

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**Landlord's Order of Possession**

Under sections 46 and 55 of the Act, I find the Landlord is entitled to an Order of Possession. This Order is effective **2 Days after serving this order to the Tenant**, and the Tenant and anyone else occupying the unit must move out 2 days after receiving this Order.

If the Tenant does not move out within 2 days, this Order can be filed in the Supreme Court and enforced as an order of that court. The costs of this enforcement are recoverable from the tenant.

The Tenant is reminded that they are obligated to leave the rental unit reasonably clean and free from damage. The Landlord is reminded to schedule and complete a move out inspection.

### Monetary Order for Unpaid Rent

Under sections 55(1.1) and 72 of the Act, I find that the landlord is entitled to monetary order for the unpaid rent of \$2,896.00, and to recover their filing fee of \$100.00. I order that the landlord retain the security deposit of \$1,200.00 with interest in partial satisfaction of the claim. I grant the landlord a monetary order for the balance due of **\$1,779.13**.

This order must be served to the tenant. If the tenant does not pay, the order may be filed and enforced in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

Monetary Issue	Granted Amount
Unpaid rent	\$2,896.00
Landlord's Filing Fee	\$100.00
Security Deposit with interest	- \$1,216.87
<b>Total Amount</b>	<b>\$1,779.13</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 *Residential Tenancy Act*.

Dated: September 25, 2023

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Residential Tenancy Branch