



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      CNR, CNOP, CNMN, MNDCT, LRE, RPP, OPR, MNRL-S, FFL

### Introduction

The hearing occurred by conference call based on an Application for Dispute Resolution (Application) filed by the Tenant on September 2, 2023 and an Application filed by the Landlord on September 28, 2023.

The Tenant applied:

- For cancellation of the 10 Day Notice to End Tenancy
- Compensation for monetary loss or other money owed
- Suspension of Landlord's right to enter the rental unit
- The Landlord to return Tenant's personal property

The Landlords applied:

- For an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities served on September 2, 2023
- For a Monetary Order for unpaid rent
- To recover the Application filing fee

### Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

- I find that Landlord acknowledged service of the Proceeding Package and was duly served in accordance with the Act.

### Service of Evidence

- Based on the submissions before me, I find that the Tenant's evidence was served to the Landlord in accordance with section 88 of the Act.
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### Preliminary Issue

At the outset of the hearing, the parties were advised that the 10 Day Notice was the primary matter to be heard and that any other matter applied for by either party would only be heard if time permitted.

### Issue(s) to be Decided

1. Is the Tenant entitled to a cancellation of the 10 Day Notice to End Tenancy for unpaid rent?
2. Is the Tenant entitled to compensation for a monetary loss or money owed?
3. Is the Tenant entitled to an order to suspend the right of the Landlord to enter the rental unit?
4. Is the Tenant entitled to an order for the Landlord to return personal property?
5. Is the Landlord entitled to an Order of Possession based on the Notice?
6. Is the Landlord entitled to a Monetary Order for unpaid rent?
7. Is the Landlord entitled to recover the filing fee?

### Background and Evidence

I have reviewed all evidence, including the testimony of both parties but will refer only to what I find relevant for my decision.

Evidence and testimony provided by the parties indicates that the tenancy began on May 25, 2023, with a monthly rent of \$2,485.00 plus an additional \$45.00 for use of the garage, due on the first of each month. A deposit of \$1,245.50 was paid and is currently held by the Landlord in trust.

According to the Landlord, when September's rent in the amount of \$2,530.00 was not paid on the first, she issued a notice to the Tenant in the amount of \$2,530.00.

The Tenant and Landlord both provided a copy of the 10 Day Notice issued on September 2, 2023, for \$2,530.00 in unpaid rent which was served by posting it on the Tenant's door.

The Tenant testified that she did not pay her September 2023 rent as the Landlord had not addressed some of her concerns regarding plumbing, the washer and dryer and wasps.

The Landlord and Tenant both testified that the Tenant's October 2023 rent has not been paid.

### Analysis

#### **Is the Tenant entitled to a cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent?**

Under section 46(4) of the *Act*, a tenant who receives a notice for unpaid rent must do one of the following within 5 days of receipt of the notice:

- pay the overdue rent, in which case the notice has no effect, or
- dispute the notice by making an application for dispute resolution.

The Tenant's application for dispute resolution on September 2, 2023, is in compliance with the 5-day requirements under section 46(4) of the *Act*.

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*.

Relying on the testimony of both parties, I find that the Tenant did not pay the rent due on September 1, 2023, and that the Landlord therefore had a valid reason for issuing the notice.

For the above reason, the Tenant's application for cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) under section 46 of the *Act* is dismissed, without leave to reapply.

#### **Is the Tenant entitled to compensation for a monetary loss or money owed?**

This issue was not adjudicated.

The Tenant's application for compensation for money owed under section 67 of the *Act* is dismissed with leave to reapply.

#### **Is the Tenant entitled to an order to suspend the right of the Landlord to enter the rental unit?**

This issue was not heard.

As the Tenant was unsuccessful in her application to cancel the 10 Day Notice, this issue is no longer relevant and is hereby dismissed without leave to reapply.

**Is the Tenant entitled to an order for the Landlord to return personal property?**

This issue was not adjudicated.

The Tenant's application for an order for the Landlord to return her personal property is dismissed with leave to reapply.

**Is the Landlord entitled to an Order of Possession based on the 10 Day Notice?**

Section 55 of the Act states that:

- (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end tenancy, the director must grant to the landlord an order of possession of the rental unit if
  - a) the landlord's notice to end tenancy complies with section 52, and
  - b) the director, during the dispute resolution proceeding, dismisses the tenant's application and upholds the landlord's notice.

I find that the Notice issued by the Landlord complies with section 52 (form and content) and was served in accordance with sections 46 and 88 of the Act.

The Tenant's application to dispute the Notice has been dismissed.

The Landlord's application for an Order of Possession is hereby granted under section 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 evidence submitted and the testimony of both parties, I find that the Landlord has substantiated her claim for unpaid rent for September and October 2023.

I hereby grant the Landlord a monetary award in the amount of \$5,060.00 for unpaid rent for September and October 2023 under section 55(4)(b) of the Act. The Landlord is ordered to keep the Tenant's security deposit of \$1,257.54, including interest, per section 38(4)(b) in partial satisfaction of the outstanding rent.

**Are the Landlords entitled to recover the \$100.00 filing fee?**

As the Landlord was successful in her 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.

### Conclusion

I grant an Order of Possession to the Landlord **effective two (2) days after service of this Order on the Tenant**. Should the Tenant 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 **\$3,902.46** for the recovery of rent for September and October 2023 and for the filing fee for this application. 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: November 11, 2023

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Residential Tenancy Branch