



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      TT: CNR, FFT  
                             LL: OPR, MNRL-S, LRSD, FFL

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “*Act*”).

The Tenant’s Application for Dispute Resolution was made on February 29, 2024 (the “Tenant’s Application”). The Tenant applied for the following relief, pursuant to the *Act*:

- to cancel a 10 Day Notice for Unpaid rent; and
- an order granting the recovery of the filing fee.

The Landlords’ Application for Dispute Resolution was made on March 20, 2024, (the “Landlords’ Application”). The Landlords applied for the following relief, pursuant to the *Act*:

- an order of possession for unpaid rent;
- a monetary order for unpaid rent;
- an order to retain the Tenant’s security deposit; and
- an order granting recovery of the filing fee.

The Landlords’ Agent attended the hearing at the appointed date and time. No one attended the hearing for the Tenant.

The Landlords’ Agent testified that she served the proceeding package and evidence to the Tenant by registered mail on March 22, 2024. The Landlords submitted a copy of the registered mail receipt in support. Pursuant to sections 89 and 90 of the *Act*, documents served in this manner are deemed to be received 5 days later, on March 27,

2024. I find the above documents were sufficiently served to the Tenant for the purposes of the *Act*.

### Preliminary Matters

Rule 7.1 of the Rules of Procedure states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. As the Landlords' Agent and I attended the hearing on time and ready to proceed and there was no evidence before me that the parties had agreed to reschedule or adjourn the matter, I commenced the hearing as scheduled at 9:30 A.M. on April 8, 2024.

Rule 7.3 of the Rules of Procedure states that if a party 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 neither the Tenant, nor a representative acting on their behalf attended the hearing to present any evidence or testimony for my consideration regarding the Tenant's Application, **I therefore dismiss the Tenant's Application in its entirety without leave to reapply.**

According to Section 4.2 of the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure"); In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the Application may be amended at the hearing. If an amendment to an Application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

The Landlords' Agent stated that since submitting the Application, the Tenant has failed to pay rent for April 2024, increasing the amount of unpaid rent from \$7,000.00 at the time of the Application, to \$10,500.00 at the time of the hearing. In light of the above, I find it is reasonable to amend the Landlord's Application to include unpaid rent for the month of April 2024, increasing the Landlords' monetary claim to \$10,500.00.

The Landlords' Agent was given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Are the Landlords entitled to an order of possession for unpaid rent, pursuant to Section 55 of the *Act*?
2. Are the Landlords entitled to a monetary order for unpaid rent, pursuant to Section 67 of the *Act*?
3. Are the Landlords entitled to retaining the Tenant's security deposit, pursuant to Section 72 of the *Act*?
4. Are the Landlords entitled to recover the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The Landlords' Agent confirmed the following; the tenancy began on May 1, 2022. Currently, rent in the amount of \$3,500.00 is owed to the Landlords on the first day of each month. The Tenant paid a security deposit in the amount of \$1,750.00 which the Landlords currently hold. The Tenant continues to occupy the rental unit.

The Landlord's Agent testified that the Tenant did not pay rent in February and March 2024. The Landlords' Agent testified that she subsequently issued a 10 Day Notice to End Tenancy for Unpaid Rent in the amount of \$7,000.00, dated March 7, 2024 (the "10 Day Notice") with an effective vacancy date of March 18, 2024.

The Landlords' Agent stated that she served the 10 Day Notice by Registered Mail on March 7, 2024. The Landlord submitted a proof of service form, and the registered mail receipt in support.

The Landlords' Agent stated that the Tenant has made no payments towards the outstanding balance of rent, and has failed to pay rent for April 2024, bringing the outstanding balance of rent to \$10,500.00.

The Landlords' Agent confirmed that the Landlords are seeking an order of possession and a monetary order based on the unpaid rent.

Analysis

Based on the oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 46 of the Act states a Landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

I find that the Landlords served the 10 Day Notice to the Tenant by Registered Mail on March 7, 2024. Pursuant to Section 90 of the Act, documents served in this fashion are deemed served to the Tenant five days later, on March 12, 2024. Therefore, I find the 10 Day Notice sufficiently served pursuant to Section 88 of the Act.

Section 46(4) says that within 5 days after receiving a notice under this section, the tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution. While the Tenant made an Application to cancel the 10 Day Notice, the Tenant failed to attend the hearing and failed to pay the outstanding rent owed.

As a result, pursuant to section 46(5) of the Act, I find the Tenant is conclusively presumed to have accepted the tenancy ended on the corrected effective date of March 22, 2024.

I find that the 10 Day Notice complies with the requirements for form and content and as the effective date of the 10 Day Notice has passed, I find that the Landlords are entitled to an order of possession effective **2 (two) days**, after service on the Tenant, pursuant to section 55 of the Act. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

I find the Landlords have established an entitlement to a monetary award for unpaid rent in the amount of **\$10,500.00**. Having been successful, I also find the Landlords are entitled to recover the **\$100.00** filing fee paid to make the Application.

The Landlords are currently holding the Tenant's security deposit in the amount of \$1,750.00. I find the Tenant's security deposit has accrued interest in the amount of \$47.13. As such, the value of the Tenant's security deposit held by the Landlord is (\$1,750.00 + \$47.13 = \$1,797.13). I find it appropriate in the circumstances to order that the Landlords retain the \$1,797.13 security deposit held in partial satisfaction of the claim.

Pursuant to section 67 of the Act, I find the Landlords are entitled to a monetary order in the amount of \$8,802.87, which has been calculated as follows:

<b><i>Claim</i></b>	<b><i>Amount</i></b>
<i>Unpaid rent:</i>	<i>\$10,500.00</i>
<i>Filing fee:</i>	<i>\$100.00</i>
<i>LESS security deposit:</i>	<i>(\$1,797.13)</i>
<b><i>TOTAL:</i></b>	<b><i>\$8,802.87</i></b>

### Conclusion

The Tenant breached the tenancy agreement by not paying rent when due.

The Landlord is granted an order of possession, which will be effective two (2) days after service on the Tenant. This order should be served as soon as possible and may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Landlord is granted a monetary order in the amount of \$8,802.87. The monetary order should be served to the Tenant as soon as possible and may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: April 08, 2024

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Residential Tenancy Branch