



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

**Dispute Codes**      For the tenant: CNR, MNDC, OLC, FF  
For the landlord: OPR-DR, MNR-DR, FF

### **Introduction**

This hearing was convened as the result of the cross applications of the parties for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act).

The Tenant applied for:

- an order cancelling the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (Notice/10 Day Notice) issued by the landlord
- an order extending the time to file an application disputing the Notice issued by the landlord
- recovery of the filing fee

The Landlord applied for:

- an order of possession of the rental unit pursuant to the Notice served to the tenant
- a monetary order for unpaid rent
- recovery of the filing fee

The Landlord's agents (Landlord) attended the hearing and were affirmed. Eight minutes after the hearing began, the Tenant called into the hearing and was affirmed.

Prior to the Tenant connecting to the hearing, the Landlord testified and provided evidence that they served the Tenant with their Notice of Dispute Resolution

Proceeding, which included the application, notice of hearing, and evidence (proceeding package) by registered mail on April 26, 2024.

Based upon the Landlord's oral and written submissions, I find the Tenant was sufficiently served the Landlord's application and notice of hearing as required by the Act.

The Landlord confirmed they received the Tenant's proceeding package.

I have reviewed the oral and written evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this Decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

#### Issue(s) to be Decided

Is the Tenant entitled to an order cancelling the Notice and an order extending the time to file an application disputing the Notice issued by the Landlord?

Is the Landlord entitled to an order of possession of the rental unit due to unpaid rent and monetary compensation from the Tenant for unpaid rent?

Is either party entitled to recovery of the filing fee paid for their application?

#### Background and Evidence

The evidence showed the tenancy began on June 7, 2019, for a monthly rent of \$2350. The Landlord submitted the current monthly rent is \$3876.

The Landlord confirmed that on April 8, 2024, the Tenant was served the Notice, by attaching it to the Tenant's door, listing unpaid rent of \$4076 owed as of March 1, 2024. The effective vacancy date listed on the Notice was April 18, 2024. The Tenant confirmed receiving the Notice on April 11, 2024. Filed into evidence was a copy of the Notice. Documents served by posting on the door are deemed served 3 days later. The Notice effective date of April 18, 2024, is automatically corrected to April 21, 2024 under the Act.

The Landlord asserted that since the issuance of the Notice, the Tenant has not paid any rent and that they now owe the amount of \$7952 in total rent deficiency through the day of the hearing. The Landlord filed documentary evidence to reflect their testimony.

In response, the Tenant did not dispute the rent remains unpaid, but that the Landlord served them a Two Month Notice to End the Tenancy for Landlord's Use. However, the Tenant remains in the rental unit without paying the rent. The Tenant said they did have another place to move, but that unit fell through. The Tenant said they do not have the money to pay rent.

### Analysis

Based on the oral and written evidence of the parties, and on the balance of probabilities, I find the following.

#### *Landlord's application-*

#### **Order of possession of the rental unit –**

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so. When a tenant fails to comply with their obligation under the Act and tenancy agreement, a landlord may serve a tenant a notice seeking an end to the tenancy, pursuant to section 46(1) of the Act, as was the case here.

The Notice informed the Tenant that they had five days of receipt of the Notice to file an application for dispute resolution with the Residential Tenancy Branch (RTB) to dispute the Notice or to pay the rent in full; otherwise the Tenant is conclusively presumed to have accepted that the tenancy is ending and must move out of the rental unit by the effective move-out date listed on the Notice.

I find the Landlord submitted sufficient and undisputed evidence to prove that the Tenant was served a 10 Day Notice, that the Tenant owed the unpaid rent listed and did not pay the outstanding rent within five days of service, or at all.

While the Tenant filed an application for dispute resolution in dispute of the Notice, they confirmed the Landlord's evidence that they had not paid the monthly rent listed on the

Notice or any monthly rent since that date. I cannot consider the personal circumstances of the Tenant, only their legal obligations under the Act.

Therefore, pursuant to section 55(2)(b) of the Act, I find that the Landlord is entitled to and I grant an **order of possession** for the rental unit **effective 7 days** after service of the order upon the Tenant.

Should the Tenant fail to vacate the rental unit pursuant to the terms of the order after being served, the order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court.

The Tenant is **cautioned** that if they do not move out within seven (7) days, they may be responsible for paying **bailiff fees**.

#### **Monetary order –**

I find that the Landlord submitted sufficient and undisputed evidence to show that the Tenant owed, but did not pay, the required monthly rent due under the written tenancy agreement, as indicated on the Notice, or any month since.

I therefore find the Landlord is entitled to a monetary award of **\$8052**, comprised of total unpaid rent deficiency of \$7952 through May 2024, and the **\$100** filing fee paid by the Landlord for this application. The Landlord is granted a monetary order in the amount of \$8052 and must be served to the Tenant to be enforced.

If the Tenant does not pay the Landlord this amount without delay, the order must be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an order of that Court and the Tenant may be held responsible for those costs.

#### *Tenant's application-*

As I have granted the Landlord's application for an order of possession of the rental unit and monetary order pursuant to the landlord's 10 Day Notice, I **dismiss** the Tenant's application for cancellation of the Notice, **without leave to reapply**.

Conclusion

The Landlord's application for an order of possession of the rental unit and a monetary order for unpaid rent and the filing fee has been granted.

The Tenant's application is dismissed without leave to reapply as I have granted the Landlord's application in full.

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: May 23, 2024

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Residential Tenancy Branch