



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes: OPR-DR MNR-DR FFL

### **Introduction**

The Landlord seeks an order of possession and a monetary order on two undisputed *10 Day Notice to End Tenancy for Unpaid Rent* (the “Notices”) under section 55(2)(b) of the *Residential Tenancy Act* (the “Act”). They are also seeking to recover the cost of two application fees under section 72 of the Act.

It should be noted that the Landlord made two applications for dispute resolution because, while there is only one respondent Tenant, there are two separate tenancies. One tenancy is for the upper, or main level of a house. And the other tenancy is for the basement suite in the same house. This decision and the ensuing two orders shall pertain to both applications and to both tenancies.

### **Procedural Issue: Service of Notice of Dispute Resolution Proceeding**

A dispute resolution hearing was convened by teleconference on Friday, September 20, 2024, at 9:30 AM. An agent for the Landlord attended the hearing and gave affirmed testimony. The Tenant did not attend the hearing, which ended at 9:43 AM.

The Landlord’s agent (hereafter the “Landlord” for brevity) testified that they served the Notice of Dispute Resolution Proceeding on the Tenant by Canada Post registered mail on August 22, 2024. A Canada Post notice card was left for the Tenant, but the Tenant failed to, or otherwise did not retrieve the mail. In any event, it is my finding that the Tenant was deemed served with the Notice of Dispute Resolution Proceeding.

### **Issues**

1. Is the Landlord entitled to an order of possession?
2. Is the Landlord entitled to a monetary order?

## **Background and Evidence**

In an application under the Act, an applicant must prove their claim on a balance of probabilities. Stated another way, the evidence must show that the events in support of the claim were more likely than not to have occurred. I have reviewed and considered all the evidence but will only refer to that which is relevant to this decision. Documentary evidence submitted by the Landlord included copies of the tenancy agreements, the Notices, and proofs of service.

### **Main Rental Unit Tenancy**

The tenancy for the main floor rental unit began on February 1, 2024. Monthly rent is \$3,200.00 and it is due on the first day of the month. There is a \$1,600.00 security deposit and a \$800.00 pet damage on this tenancy. There is a written tenancy agreement in place.

On August 8, 2024, the Landlord served a 10 Day Notice to End Tenancy for Unpaid Rent (the "Upper Notice") by posting it on the door of the rental unit. The Upper Notice, all pages of which were served, indicates that there were rent arrears of \$12,800.00. The Tenant did not file an application with the Residential Tenancy Branch to dispute the Upper Notice.

As of September 20, 2024, the Tenant owes \$16,000.00 in rent arrears for the main rental unit.

### **Basement Rental Unit Tenancy**

The tenancy for the basement rental unit began on May 1, 2024. Monthly rent is \$1,800.00 and it is also due on the first day of the month. There is no security or pet damage deposit on the basement rental unit tenancy. There is a written tenancy agreement in place, as well.

On August 8, 2024, the Landlord served a 10 Day Notice to End Tenancy for Unpaid Rent (the "Basement Notice") by posting it on the door of the rental unit. The Basement Notice, all pages of which were served, indicates that there were rent arrears of \$5,400.00. The Tenant did not file an application with the Residential Tenancy Branch to dispute the Basement Notice. As of September 20, 2024, the Tenant owes \$7,200.00 in rent arrears for the basement rental unit.

## Analysis

Section 26 of the Act requires tenants to pay rent on time unless they have a legal right to withhold some of the rent. Section 46(1) of the Act allows landlords to end a tenancy if the tenant does not pay rent on time by issuing a *10 Day Notice to End Tenancy for Unpaid Rent*.

The Landlord's affirmed and undisputed oral and documentary evidence shows that the Tenant has not paid rent on either rental unit for many months. Therefore, I find on a balance of probabilities that the Notices were given for a valid reason, namely, the Tenant's non-payment of rent. I also find that the Notices both comply with the form and content requirements under section 52 of the Act.

The Tenant did not dispute either of the Notices and the Tenant is thus conclusively presumed, under section 46(5) of the Act, to have accepted that the two tenancies ended on August 18, 2024.

Pursuant to section 55(2)(b) of the Act, the Landlord is therefore granted an order of possession for both rental units. A copy of the order of possession is attached to this Decision and must be served by the Landlord upon the Tenant. The Tenant has seven (7) days to vacate both rental units from the date of service or deemed service. The order of possession may be filed and enforced in the Supreme Court of British Columbia.

Since the Landlord's application relates to a section 46 notice to end tenancy, the Landlord is also entitled to an order for unpaid rent under section 55(1.1) of the Act. Therefore, the Tenant is ordered to pay \$23,200.00 in rent arrears.

Because the Landlord was successful in their two applications, they are entitled to \$200.00 to cover the cost of the two application fees under section 72 of the Act. In total, the Landlord is awarded \$23,400.00.

Under section 38(4)(b) of the Act, the Landlord is authorized to retain the security and pet damage deposits (\$2,400.00) as partial satisfaction of the payment order.

A monetary order for the remaining amount (\$21,000.00) is attached to this Decision and must be served on the Tenant. The monetary order is enforceable in the Provincial Court of British Columbia (Small Claims Court).

## **Conclusion**

The applications are granted.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: September 20, 2024

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Residential Tenancy Branch