



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      CNR-MT, OPR-DR, MNR-DR, FFL

### **Introduction**

This hearing was re-convened after the issuance of a December 18, 2024, interim decision and dealt with the Tenant's November 3, 2024, and Landlords' November 4, 2024, Applications for Dispute Resolution under the *Residential Tenancy Act* (the Act).

The Tenant applied for:

- cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent (10 Day Notice) and an extension of the time limit to dispute the 10 Day Notice under sections 46 and 66 of the Act

The Landlords applied for:

- an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (10 Day Notice) under sections 46 and 55 of the Act
- a Monetary Order for unpaid rent under section 67 of the Act
- authorization to recover the filing fee for this application from the Tenant under section 72 of the Act

No one attended the hearing for the Tenant.

Landlords J.A. and S.A. attended the hearing for the Landlords.

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

I find that the Tenant was deemed served on November 12, 2024, by registered mail in accordance with section 89(1) of the Act. The Landlords provided a copy of the Canada Post Customer Receipt containing the tracking number to confirm this service.

## **Service of Evidence**

Based on the submissions before me, I find that the Landlords' evidence was served to the Tenant in accordance with section 88 of the Act.

## **Preliminary Matters**

At the outset of the hearing the Landlords sought to increase their monetary claim from \$3,532.56 to \$5,887.60 to reflect the Tenant's failure to pay \$2,355.04 in monthly rent for November and December 2024, the additional two months of unpaid rent waiting for this hearing.

*Residential Tenancy Branch Rules of Procedure*, Rule 7.12, states that 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. I allow the amendment as this was clearly rent that the Tenant would have known about and resulted since the Landlords submitted the application.

## **Issues to be Decided**

Should the 10 Day Notice be cancelled or are the Landlords entitled to an Order of Possession based on the 10 Day Notice?

Are the Landlords entitled to a Monetary Order for unpaid rent?

Are the Landlords entitled to recover the filing fee for this application from the Tenant?

## **Background and Evidence**

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

Evidence was provided showing that this tenancy began on August 1, 2015, with a monthly rent of \$900.00, due on the last day of the month, with a security deposit in the amount of \$450.00.

According to Landlord J.A., a 10 Day Notice was served on the Tenant on October 25, 2024, for \$3,532.56 in unpaid rent for August to October 2024 by posting it on the Tenant's door. He testified that the Tenant has also not paid any rent for November and December 2024. Copies of the notice and bank records were submitted as evidence.

## **Analysis**

### **Should the 10 Day Notice be cancelled or are the Landlords entitled to an Order of Possession based on the 10 Day Notice?**

Section 46 of the Act states that upon receipt of a 10 Day Notice the tenant must, within five days, either pay the full amount of the arrears as indicated on the 10 Day Notice or dispute the 10 Day Notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant(s) do not pay the arrears or dispute the 10 Day Notice they are conclusively presumed to have accepted the end of the tenancy under section 46(5).

I find that the 10 Day Notice was served to the Tenant on October 25, 2024, and that the Tenant had until October 30, 2024, to dispute the 10 Day Notice or to pay the full amount of the arrears.

Based on the evidence before me, the undisputed testimony of the Landlords and on a balance of probabilities, I find the Tenant failed to pay any rent within five days of receiving the 10 Day Notice and did not make an application under section 46(4) of the Act within the same timeframe. In accordance with section 46(5) of the Act, due to the failure of the Tenant to take either of these actions within five days, I find the Tenant is conclusively presumed to have accepted the end of this tenancy on November 5, 2024, the effective date on the 10 Day Notice. In this case, the Tenant and anyone on the premises were required to vacate the premises by November 5, 2024.

Therefore, I find that the Landlords are entitled to an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (10 Day Notice) under sections 46 and 55 of the Act.

### **Are the Landlords 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 before me, the undisputed testimony of the Landlords and on a balance of probabilities, I find that the Landlords have established a claim for unpaid rent for the period August to December 2024.

Section 67 of the Act states that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

Therefore, I find the Landlords are entitled to a monetary award for unpaid rent under section 67 of the Act, in the amount of \$5,887.60.

Under section 38(4) of the Act, I authorize the Landlords to retain the Tenant's security deposit in the amount of \$471.19, including interest, in partial satisfaction of the monetary award.

**Are the Landlords entitled to recover the filing fee for this application from the Tenant?**

As the Landlords were successful in their application, I find that the Landlords are 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 Landlords **effective seven (7) 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 Landlords a Monetary Order in the amount of **\$5,516.41** under the following terms:

<b>Monetary Issue</b>	<b>Granted Amount</b>
a monetary award for unpaid rent under section 67 of the Act	\$5,887.60
authorization to retain all of the Tenants security deposit in partial satisfaction of the Monetary Order requested under section 67 of the Act	-\$471.19
authorization to recover the filing fee for this application from the Tenants under section 72 of the Act	\$100.00
<b>Total Amount</b>	<b>\$5,516.41</b>

The Landlords are 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 and enforced in the Provincial Court of British Columbia (Small Claims Court) if equal to or less than \$35,000.00. Monetary Orders that are more than \$35,000.00 must be filed and enforced in the Supreme Court of British Columbia.

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: December 30, 2024

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Residential Tenancy Branch