



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Municipal Affairs

## **DECISION**

### **Dispute Codes**

For the Tenant: CNR

For the Landlord: OPR, MNR-S, MNDC-S, LRSD, FF

### **Introduction**

This hearing was convened as the result of the cross applications for dispute resolution (application) of the parties 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

The Landlord applied for:

- an order of possession of the rental unit pursuant to the 10 Day Notice served to the Tenant
- a monetary order for unpaid rent
- authority to keep the Tenant's security deposit to use against a monetary award
- to retain all or part of the Tenant's security deposit
- recovery of the cost of the filing fee

The Landlord and their witness attended the hearing and were affirmed. The Landlord said that they were not served all of the Tenant's application and hearing package.

The Landlord submitted they served the Tenant their Notice of Dispute Resolution Proceeding, which included the application, notice of hearing, and evidence (Proceeding Package) by putting it in the Tenant's mailbox on February 16, 2025, and then sending a follow up email to the Tenant.

The Landlord's witness testified that they witnessed the service of the proceeding package.

I find the Landlord submitted sufficient evidence to prove the Tenant was served with the Landlord's application as required under the Act.

The hearing proceeded in the Tenant's absence and continued for 31 minutes. The Landlord was provided the opportunity to present their evidence and submissions orally, refer to documentary evidence submitted prior to the hearing, and make submissions to me.

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.

### **Preliminary and Procedural Matter –**

Despite having their own hearing scheduled for 11:00 AM on March 5, 2025, the Tenant failed to attend.

Rules 7.3 and 7.4 of the Rules of Procedure provides as follows:

#### **7.3 Consequences of not attending the hearing**

If a party or their agent 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 re-apply.

#### **7.4 Evidence must be presented**

Evidence must be presented by the party who submitted it, or by the party's agent.

If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

Accordingly, in the absence of any evidence or submissions from the Tenant at the hearing, I order their application dismissed, without leave to reapply.

As another preliminary matter, I declined to consider the Landlord's separate monetary claim for damages and stress. I find the claim was not sufficiently related to the primary issue of considering the merits of the 10 Day Notice.

I dismiss these claims, with leave to reapply.

Issue(s) to be Decided

Is the Landlord entitled to an order of possession of the rental unit due to unpaid rent?

Is the Landlord entitled to a monetary order for unpaid rent and recovery of the cost of the filing fee?

Is the Landlord entitled to keep the Tenant's security deposit in partial satisfaction of a monetary award?

Background and Evidence

The written tenancy agreement filed in evidence shows a tenancy start date of October 22, 2022, for monthly rent of \$3000, and a security deposit of \$1500 paid by the Tenant on October 20, 2022. The Landlord filed a notice of rent increase, which increased the monthly rent to \$3198 in January 2025.

The Landlord submitted evidence and testified that on February 6, 2025, they served the Tenant with the 10 Day Notice, by attaching it to the Tenant's door, listing a total unpaid rent of \$3198 owed as of February 6, 2025. The effective move-out date listed on the Notice was February 16, 2025. The Notice was filed into evidence.

The Landlord testified that they served the Tenant a 10 Day Notice in January 2025, but were not certain it was served properly, so they issued another 10 Day Notice on February 6, 2025.

The Landlord stated that the Tenant failed to pay the rent listed on the Notice within 5 days, or at all, and the failed to pay the next month's rent. The Landlord said that as of the day of the hearing, the Tenant owed a total of \$6396 in unpaid monthly rent.

The Landlord's witness stated they witnessed the service of all documents to the Tenant and further, they said the Tenant has not paid any rent since the 10 Day Notice was

given to the Tenant, creating a hardship for the Landlord in being able to pay the mortgage.

### Analysis

#### **Order of Possession –**

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 pay the full rent due, 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 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, unopposed evidence to prove that the Tenant was served the Notice, that the Tenant owed the rent listed on the Notice, and did not pay the rent, within five days of service. I find the tenancy ended on the corrected effective date of the Notice, or February 19, 2025, ten days after it was deemed served on February 9, 2025, three days after it was attached to the door.

As a result, I order the tenancy ended on February 19, 2025, and I grant the Landlord an order of possession pursuant to section 55(2) of the Act, effective **two (2) days** after service of the order upon the Tenant.

The Tenant must be served the Order to be enforceable. If the Tenant fails to voluntarily comply by vacating the rental unit within 2 days, the Order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court if it becomes necessary.

The Tenant is cautioned that costs of such enforcement, **such as bailiff costs and filing fees**, are recoverable from the Tenant.

#### **Monetary Order –**

I find that the Landlord submitted sufficient, unopposed evidence to prove that the Tenant owes a total amount of unpaid rent of \$6396, due under the tenancy agreement, as of the day of the hearing.

I find it reasonable to amend the Landlord's initial monetary claim of \$3198 for unpaid rent to include the next month's unpaid rent of \$3198.

As a result, I find the Landlord has established a monetary claim of \$6396, as noted above.

I also grant the Landlord recovery of their filing fee of **\$100**, for a total monetary award of **\$6496**.

To date, the Tenant's security deposit of \$1500 paid on October 20, 2022, has accumulated interest of \$73.28.

At the Landlord's request, I authorize the Landlord to deduct the security deposit and interest of \$1573.28 in partial satisfaction of their monetary award of **\$6496**.

I grant the Landlord a monetary order for the amount of **\$4922.72** for the balance due.

Should the Tenant fail to pay the Landlord this amount without delay after being served the order, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an order of that Court.

The Tenant is **cautioned** that costs of such enforcement are recoverable from the tenant.

### Conclusion

The Tenant's application is dismissed, without leave to reapply.

The Landlord's application for an order of possession of the rental unit and a monetary award for unpaid rent has been granted in the above terms.

The Landlord's monetary claim for damages and loss are dismissed, with leave to reapply.

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: March 05, 2025

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Residential Tenancy Branch