



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Municipal Affairs

DECISION

Dispute Codes CNR, AAT, FFT / OPR-DR, FFL

Introduction

The hearing was convened following Applications for Dispute Resolution (Applications) from both parties under the *Residential Tenancy Act* (the Act), which were crossed to be heard simultaneously.

The Tenant requests the following:

- An order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) under section 46(4)(b) of the Act;
- An order for the Landlord to allow the Tenant or their guests to access the rental unit under sections 30 and 70 of the Act; and
- To recover the filing fee for their Application from the Landlord under section 72(1) of the Act.

The Landlord requests the following:

- An order of possession based on the Notice under sections 46 and 55 of the Act; and
- To recover the filing fee for their Application from the Tenant under section 72(1) of the Act.

The Landlord and their Agent attended the hearing. The hearing started at 9:30 AM and the line was left open until 9:50 AM to enable the Tenant to call in, however they did not attend, and the hearing proceeded in their absence under rule 7.3 of the *Rules of Procedure*.

Service of Notice of Dispute Resolution Proceeding and Evidence

The Landlord affirmed that they received no notice of the Tenant's Application. As noted above, the Tenant did not attend the hearing to provide submissions on the issue of service of the Notice of Dispute Resolution Proceeding and their evidence (Collectively, the Materials) for their Application.

The Tenant also did not provide any written submissions ahead of the hearing to verify that the Materials were served to the Landlord as required, having been instructed to provide a *Proof of Service* approved Residential Tenancy Branch form # 55.

Based on the above, I find the Tenant did not serve the Materials to the Landlord as required and their Application is dismissed without leave to reapply as a result.

The Landlord affirmed the Materials for their Application were served to the Tenant on August 13, 2025 by attaching them to the door of the rental unit. This was outside of the three-day timeframe set out in rule 3.1 of the Residential Tenancy Branch *Rules of Procedure* and section 59(3) of the Act. The Landlord indicated English is not their first language and they struggled with the instructions given to them. The Landlord also provided a witnessed *Proof of Service* form for review.

From the above, I find the Materials for the Landlord's Application were served on August 13 in accordance with sections 88(g) and 89(2)(d) of the Act and were deemed received on August 16 in accordance with section 90(c) of the Act. The hearing took place on August 22, so clearly the Materials were not deemed to have been received in compliance with Rule 3 of the *Rules of Procedure*.

Despite the above, I found it appropriate to extend the time limit to serve the Materials and hear the Landlord's Application. As set out in Policy Guideline 12 - *Service Provisions*, the objective of serving records is to give notice to the person who has been served that an action has been or will be taken against them. An applicant failing to serve the Notice Package within three days of it being made available does not necessarily mean that the respondent was not made aware of the action being taken against them and that they did not have sufficient time to respond to the matters of dispute. Instead, section 66(1) of the Act gives arbitrators the authority to extend the time limit to serve the Notice Package if they find that the Package was sufficiently served for the purposes of the Act on a later date.

In this case, the issue central to both Applications was validity of the Notice. Indeed, the only issue raised in the Landlord's Application besides the request to recover the filing fee was an Order of Possession based on the Notice. Had the Landlord been made aware of the Tenant's Application, they would not have been required to submit their own as the validity of the Notice would have been addressed by virtue of the Tenant's request to cancel the Notice.

Since the Tenant submitted their Application first, they were provided with the details of the hearing and how to attend, yet they did not. Since they disputed the Notice, they would also have been aware that the validity of the Notice would be addressed at the hearing. I reiterate, this was the one central issue in the Landlord's Application. In these circumstances, I find little prejudice to the Tenant in the late service of the Landlord's Materials and extend the deadline under section 66(1) of the Act.

Preliminary Issue – Amendment

The tenancy agreement lists two tenants, BL and JW. The Notice lists only BL and the envelope containing the Materials appears to be addressed to only BL. The Landlord affirmed that JW had vacated the rental unit at least two months ago.

Given JW was not listed on the Notice and there appears to be no realistic possibility of them being notified of this dispute, I amended the Landlord's Application to remove them as a party and leave BL as the sole respondent. Since tenants are jointly and severally liable for obligations under tenancy agreements, the Application may proceed against just BL.

Issues to be Decided

- Is the Landlord entitled to an Order of Possession based on the Notice?
- Can the Landlord recover the filing fee for the Application?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this Decision.

Evidence was provided confirming that the tenancy began on February 28, 2025 with a monthly rent of \$1,450.00 due on the first day of the month. A security deposit of \$725.00 was paid on February 14 which the Landlord still holds. There is a written tenancy agreement, a copy of which was submitted as evidence. The Landlord affirmed that the Tenant still occupies the rental unit.

The Landlord's evidence is as follows.

Rent due July 1, 2025 was not paid. There are no rental arrears from before this date. The Notice was served to the Tenant on July 15 by attaching to the door of the rental unit. A completed and witnessed *Proof of Service* form was provided by the Landlord. I note the Tenant indicates in their Application that the Notice was received on July 15.

A copy of the Notice was entered into evidence by both parties. The Notice is on the approved form, is signed and dated July 15 and provides an effective date of July 25. The reason for ending the tenancy, per the Notice, is the Tenant has failed to pay rent of \$1,450.00 due on July 1.

The Landlord affirmed that no rent was paid by the Tenant since the Notice was issued, so total arrears now stand at \$2,900.00 which is made up of July and August's rent. There are also outstanding utilities, but these are not referenced on the Notice.

In early July, the police had carried out a safety check on the Tenant and it was discovered that the lock to the rental unit had been changed. The Landlord changed the lock and gave a copy to the Tenant as a result.

The Landlord seeks an Order of Possession under the Notice, and compensation of \$2,900.00 in unpaid rent.

Analysis

Rule 6.6 of the Residential Tenancy Branch *Rules of Procedure* states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 26 of the Act requires tenants to pay rent on time unless they have a legal right to withhold some, or all, of the rent. Additionally, section 46(1) of the Act allows a

landlord 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.

Based on the evidence before me and the Landlord's undisputed testimony, which I found to be detailed, consistent, supported by evidence and ultimately to be credible, I accept that rent due on July 1 was not paid by the Tenant. Therefore, I find on a balance of probabilities that the Notice was given for a valid reason, namely, the non-payment of rent. I also find that the Notice complies with the form and content requirements of section 52 of the Act.

I find the Notice was served on July 15 by attaching to the door of the rental unit, therefore it would have been deemed received on July 18, the third day after it is served in accordance with section 90(c) of the Act, though given the Tenant acknowledged receipt on July 15 in their Application, I find it was received on this day.

I accept the Landlord's undisputed testimony that the outstanding rent was not paid in full within five days of the Tenant receiving the Notice. Had this been done it would have meant the Notice has no effect in accordance with section 46(4)(a) of the Act.

Based on the above findings, the Landlord is granted an Order of Possession under section 55(1) of the Act since the Tenant's Application disputing the Notice is dismissed without leave to reapply. The Landlord's Application based on the Notice is granted. As the effective date of the Notice has passed, I issue the Landlord an Order of Possession effective seven days after service.

The Landlord is entitled to an order for unpaid rent under section 55(1.1) of the Act. Therefore, the Tenant is ordered to pay \$2,900.00 in unpaid rent to the Landlord.

In accordance with the offsetting provisions of section 72(2)(b) of the Act, the Landlord may retain the Tenant's security deposit of \$725.00, plus interest of \$3.59, as partial satisfaction of the payment order.

Per section 4 of the *Residential Tenancy Regulation*, interest on security deposits is calculated at 4.5% below the prime lending rate. The amount of interest owing on the security deposit was calculated using the Residential Tenancy Branch interest calculator using today's date.

As the Landlord has been successful in their Application, I order the Tenant to pay the Landlord the amount of \$100.00 in respect of the filing fee in accordance with section 72(1) of the Act.

Conclusion

The Landlord's Application is granted. The Tenant's Application is dismissed without leave to reapply.

The Landlord is issued an Order of Possession. A copy of the Order of Possession is attached to this Decision and must be served on the Tenant as soon as possible. The Tenant has seven days to vacate the rental unit from the date of service or deemed service. If the Tenant does not comply with the Order of Possession, it may be filed by the Landlord with the Supreme Court of British Columbia and enforced as an order of that court.

The Landlord is issued a Monetary Order. A copy of the Monetary Order is attached to this Decision and must be served on the Tenant as soon as possible. It is the Landlord's obligation to serve the Monetary Order on the Tenant. The Monetary Order is enforceable in the Provincial Court of British Columbia (Small Claims Court). The Order is summarized below.

Item	Amount
Unpaid rent for July and August 2025	\$2,900.00
Filing fee	\$100.00
Less: security deposit, plus interest	(\$728.59)
Total	\$2,271.41

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: August 22, 2025

Residential Tenancy Branch