



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Municipal Affairs

DECISION

Dispute Codes CNR, PSF, LRE, OFT / OPR-DR, MNR-DR, FFL

Introduction

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

The Tenant requests the following:

- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) under section 46(4) of the Act;
- An order requiring the Landlord to provide services or facilities as required by the tenancy agreement or the Act under section 62 of the Act;
- An order to suspend or set conditions on the Landlord's right of entry to the rental unit under section 70 of the Act; and
- An order that the tenancy has ended due to a frustrated tenancy agreement under sections 44(1)(e) and 56.1 of the Act.

The Landlord requests the following:

- An order of possession based on the Notice under sections 46(5) and 55(2)(b) of the Act;
- A Monetary Order for unpaid rent based on the Notice under sections 55(4) and 67 of the Act; and
- To recover the filing fee for their Application from the Tenant under section 72(1) of the Act.

Parties attended the hearing for the Tenant and the corporate Landlord.

Service of Notice of Dispute Resolution Proceeding and Evidence

The Tenant affirmed they served the Notice of Dispute Resolution Proceeding Package (the Materials) for their Application to the Landlord via registered mail. The Tenant did not provide any records to support this, such as copies of receipts or a completed Proof of Service form. The Tenant was unable to provide a Canada Post tracking number for the package during the hearing. The Landlord denied receiving the Materials and indicated they had no knowledge of the Tenant's Application before the hearing.

In accordance with rules 3.1 and 3.5 of the *Rules of Procedure* (the Rules), an applicant must serve the respondent with the Materials for their Application within three days of them being made available and must be prepared to demonstrate to the satisfaction of the arbitrator during the hearing that this was done. If an applicant cannot demonstrate that each respondent was served as required, the arbitrator may adjourn the application or dismiss it with or without leave to reapply.

Based on the above, I find the Tenant has failed to establish the Landlord was served with the Materials as required. As will be noted later in this Decision, the tenancy is ended and the Tenant had already vacated the rental unit by the time the hearing took place. The claims raised in the Tenant's Application relate to an ongoing tenancy. In these circumstances, I found it most appropriate to dismiss the Tenant's Application without leave to reapply.

The Tenant acknowledged receipt of the Materials for the Landlord's Application. Given this, I find these records were served as required under section 89 of the Act.

The Landlord's Agent indicated the Landlord's evidence was served to the Tenant via an electronic filesharing platform on August 21, 2025. The Landlord provided records indicating the Tenant had opened a notification email but there was no reference to what documents, if any, were provided in the correspondence. The Tenant denied receiving any evidence from the Landlord's side ahead of the hearing.

Under Rule 3.16, during the hearing, a respondent must be prepared to demonstrate to the satisfaction of an arbitrator that each applicant was served with all their evidence as required.

Based on the above, I find the Landlord failed to establish their evidence was served to the Tenant as required. I omitted the Landlord's written evidence from consideration on

the grounds of procedural fairness, though since the Tenant acknowledged they had in their possession a copy of the written tenancy agreement and the Notice, I will consider these records for the purposes of the Landlord's Application.

Preliminary Issues

Vacant rental unit

The parties agree that the Tenant had vacated the rental unit on or around August 16, 2025. The precise date was not known from the Landlord's side. The Landlord's Agent confirmed that an Order of Possession was no longer sought, though there was still the issue of unpaid rent to address from their perspective.

Based on the above, I find the Landlord's claim for an Order of Possession is now moot and is therefore dismissed without leave to reapply. As already noted, the Tenant's claims are dismissed without leave to reapply so only the issues of unpaid rent and the filing fee for the Landlord's Application will be determined in this Decision.

Tenant's second application

The Tenant submitted a separate application seeking an order that the tenancy has ended due to a frustrated tenancy agreement. This is a duplication of the fourth claim raised in the Tenant's Application dealt with in this Decision. The Tenant's second application was set to be heard on September 19, 2025.

During the hearing, the Tenant indicated that their second application was no longer required given they had vacated the rental unit and requested that the second application be withdrawn. The Landlord's Agent confirmed this was understood and raised no issues.

Based on the above, I allowed the Tenant's second application to be withdrawn in accordance with Rule 5.0.1. I will arrange for the hearing scheduled for September 19 to be cancelled and the Tenant's filing fee refunded to them. The file number for the Tenant's second application is included on the front page of this Decision for reference.

Claims not listed in the Landlord's Application

As set out in Rule 2.2, the claim is limited to what is stated in the application. Rule 6.2 states that the hearing is limited to matters claimed on the application unless the arbitrator allows a party to amend the application.

During the hearing, the Landlord's Agent referenced claims that were not included in the Landlord's Application, such as cleaning costs, loss of rental income after the tenancy ended, and damage to the rental unit. As noted in the Introduction section of this Decision, the only monetary claim brought by the Landlord in their Application was that for unpaid rent based on the Notice.

I acknowledge the other claims were listed in the Landlord's Monetary Order Worksheet, though as already set out above, I find this was not served to the Tenant as required. I also acknowledge the description of the Landlord's claim for unpaid rent provides "unpaid rent management fees cleaning damage to unit from pets" (sic) but I find the claims are not particularised. I reiterate, there are no claims for damage to the rental unit or for loss under the Act, *Residential Tenancy Regulation* (the Regulation), or tenancy agreement that would cover the other claim.

Given the above, I did not allow the Landlord to amend their Application to include the claims outside of the one included in the Application for unpaid rent based on the Notice. I find that do have allowed an amendment would have been overly prejudicial to the Tenant.

Issues to be Decided

- Is the Landlord entitled to a Monetary Order for unpaid rent based on the Notice?
- Can the Landlord recover the filing fee for their Application from the Tenant?

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.

The parties agreed on the following regarding the tenancy:

- The tenancy began on May 1, 2025.
- The Tenant vacated the rental unit on or around August 16.
- Rent was \$1,750.00 per month due on the first day of the month.
- A security deposit of \$875.00 was paid by the Tenant on April 18, 2025, which the Landlord still holds.
- There is a written tenancy agreement, a copy of which was entered into evidence.

A copy of the Notice was entered into evidence. The Notice is on the approved form, is signed and dated August 7, 2025 and provides an effective date of August 16. The reason for ending the tenancy, per the Notice is the Tenant has failed to pay rent in the amount of \$1,750.00 due on August 1.

The Landlord's claim

The Tenant cancelled the pre-authorized payment for rent due August 1, 2025. After contacting the Tenant, it became apparent they were refusing to pay rent. As a result, the Notice was served to the Tenant on August 7 to the email address provided for service on the tenancy agreement. A completed Proof of Service form was provided by the Landlord.

The Landlord received the keys to the rental unit from the concierge in the residential property and had vacant possession by August 16, but no payments were made by the Tenant after the Notice was issued.

The Landlord seeks a Monetary Order for unpaid rent for \$3,500.00 which is made up for the rent for August and September.

The Tenant's response

The Tenant acknowledged that rent for August 2025 went unpaid and that no payments had been made to the Landlord since receipt of the Notice.

The Tenant affirmed they had received harassment from the Landlord's agents, requests for them to leave the rental unit, and threats that the police would be called. Further, they were recorded on video without their consent. The Tenant also said the Landlord's agents entered the rental unit without notice. On this basis, they cancelled the payment due August 1, 2025 and moved out of the rental unit on August 16. It was

acknowledged there was no agreement from the Landlord's side for any deductions from rent to be made.

Analysis

Rule 6.6 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 whether or not the landlord complies with this Act, the Regulation, or the tenancy agreement unless they have a legal right to withhold some, or all, of the rent.

The Act sets out limited circumstances where the tenant can make deductions from rent, which include:

- When a tenant has paid a security deposit or pet damage deposit above the allowed amount;
- Reimbursement of costs incurred by the tenant for emergency repairs;
- When a landlord collects rent for a rent increase that does not comply with the Regulation;
- When a tenant has received a notice to end tenancy for Landlord's Use of Property under section 49 of the Act;
- If the landlord gives authorization to not pay rent; or
- As ordered by the Director.

Section 46(1) of the Act states that a landlord may end a tenancy if rent is unpaid by giving a notice to end tenancy on any day after it is due.

In this case, I find the Notice was served to the Tenant by email on August 7, 2025. This means it would have been deemed received three days after sending on August 10 in accordance with section 44 of the Regulation. The effective date of the Notice would automatically correct to August 20 under section 53 of the Act. I find that the Notice complies with the form and content requirements of section 52 of the Act.

It was undisputed that rent due August 1, 2025 went unpaid by the Tenant. Neither party put forward evidence to indicate that any of the above circumstances where rent may be withheld are applicable, nor are any apparent to me. Therefore, I find on a

balance of probabilities that the Notice was given for a valid reason, namely, the non-payment of rent.

It was also undisputed 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.

I find the Tenant accepted the Notice and vacated the rental unit before its deemed effective date of August 20. Though the Tenant submitted an Application disputing the Notice, I find they did not notify the Landlord of this by providing the Materials as required as already set out in this Decision.

Had the Tenant continued their occupancy of the rental unit, the Landlord would have been entitled to an Order of Possession under section 55 of the Act. I find the Landlord is also entitled to compensation for unpaid rent under sections 55(1.1) and 55(4)(b) of the Act since no payments were made by the Tenant after the Notice was issued and there were no valid grounds for the Tenant withholding any rent.

I issue the Landlord a payment order for \$1,750.00 for rent due August 1, 2025. Since the Landlord's claim is for unpaid rent based on the Notice and the Tenant did not occupy the rental unit beyond September 1 when further rent would have become due, I decline to issue a payment order for another \$1,750.00 for rent due September 1 as requested by the Landlord's Agent during the hearing.

I make no determination on the merits of the claim the Landlord may have for loss of rental income from September 1 since this was not raised in this Application. The Landlord is at liberty to make a claim for this under a separate application.

In accordance with the offsetting provisions of section 72(2)(b) of the Act, the Landlord may retain the Tenant's security deposit of \$875.00, plus interest, in partial satisfaction of the above-mentioned payment order.

Per section 4 of the 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 as \$3.37 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 \$100.00 in respect of the filing fee in accordance with section 72(1) of the Act.

Conclusion

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

The Landlord's Application for a Monetary Order for unpaid rent is granted.

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 due August 1, 2025	\$1,750.00
Filing fee	\$100.00
Less: security deposit, plus interest	(\$878.37)
Total	\$971.63

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 12, 2025

Residential Tenancy Branch