



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute codes      OPR MNR MND MNSD FF / CNR CNC

### Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

Landlord:

- an order of possession for failure to pay rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- a monetary order for damage to the rental unit pursuant to section 67;
- authorization to retain all or a portion of the tenant’s security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover the filing fee for this application pursuant to section 72.

Tenant:

- cancellation of the landlord’s One Month Notice to End Tenancy for Cause (the One Month Notice) pursuant to section 47;
- cancellation of the landlord’s 10 Day Notice to End Tenancy for unpaid rent pursuant to section 46 (the 10 Day Notice);

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony and present evidence. The parties confirmed service of the respective applications for dispute resolution, including the notice of hearing and evidence on file.

### Preliminary Issue – Scope of Application

*Residential Tenancy Branch Rules of Procedure*, Rule 2.3 states that, if, in the course of the dispute resolution proceeding, the Arbitrator determines that it is appropriate to do

so, the Arbitrator may sever or dismiss the unrelated disputes contained in a single application with or without leave to apply.

I am exercising my discretion to dismiss the landlord's application for monetary compensation for damages with leave to reapply as this matter is not related. Leave to reapply is not an extension of any applicable time limit.

### Preliminary Issue – Amendment to Landlord's Application

Section 64(3)(c) of the Act allows me to amend an application for dispute resolution.

At the hearing, the landlord testified that the tenants had not yet vacated the rental unit and therefore asked to amend his claim to include outstanding rent for March 2020. Although the tenants did not have prior notice of this claim, I find that the tenants should reasonably have known that the landlord would suffer this loss if the tenants neither paid rent nor vacated the rental unit. I therefore allowed the landlord's request for an amendment.

### Issues

Is the landlord entitled to an order of possession for unpaid rent or should the 10 Day Notice be cancelled?

Is the landlord entitled to an order of possession for cause or should the One Month Notice be cancelled?

Is the landlord entitled to a monetary award for unpaid rent?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this application from the tenant?

### Background and Evidence

The tenancy began on October 2, 2017 and the current monthly rent is \$2130.00 which includes \$30.00 for parking. The rent is payable on the 2<sup>nd</sup> day of each month. The tenants paid a security deposit of \$1000.00 at the start of the tenancy which the landlord continues to hold.

The parties submitted a copy of a 10 Day Notice dated February 10, 2020. The 10 Day Notice indicates an outstanding rent amount of \$2130.00 which was due on February 2, 2020. The 10 Day Notice provides that the tenants had five days from the date of

service to pay the outstanding rent in full or apply for Dispute Resolution or the tenancy would end on the stated effective date of the Notice.

The parties confirmed the tenants received the 10 Day Notice on February 20, 2020.

The landlord testified the outstanding rent was not paid within 5 days and no rent has been paid since.

The landlord's amended monetary claim is for outstanding rent in the amount of \$4260.00. The landlord testified that this includes unpaid rent as per below:

Item	Amount
February 2020	2130.00
March 2020	2130.00
<b>Total Monetary Order Sought</b>	<b>\$4260.00</b>

The tenant M.S. acknowledged service of the 10 Day Notice and that they did not pay the full amount of the arrears indicated, within five days, of receiving the Notice. The tenant acknowledged that rent for March 2020 has also not been paid. The tenant testified that he withheld the rent as the landlord had issued them a One Month Notice to End Tenancy on January 3, 2020. The tenant testified that he tried to discuss the reason for the eviction with the landlord and the landlord advised him he would see him in court.

The landlord replied that he did tell the tenant he would see him in court in relation to the grounds for the One Month Notice and claim for some damage but still expected to be paid rent which was refused by the tenant.

### Analysis

I am satisfied that the tenants were served with the 10 Day Notice on February 10, 2020.

Section 46 of the Act requires that upon receipt of a 10 Day Notice the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the Notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch.

Section 26 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Although the tenants filed an application for dispute resolution within the time limit permitted under the Act, I find the tenants application must be dismissed as the tenants acknowledged rent was not paid in full within 5 days after receiving the notice nor did the tenants have a right under this Act to deduct all or a portion of the rent. I find the tenants also submitted insufficient evidence that they attempted to pay rent and that the landlord refused to accept the rent payments.

Section 55(1) of the *Act* states that if a tenant applies to dispute a landlord's notice to end tenancy and their Application for Dispute Resolution is dismissed or the landlord's notice is upheld the landlord must be granted an order of possession if the notice complies with all the requirements of Section 52 of the *Act*.

I find that the 10 Day Notice issued by the landlord complies with the requirements of Section 52 of the Act, accordingly, the landlord is granted an Order of Possession pursuant to section 55 of the Act.

I accept the landlord's claim for outstanding rent of \$4,260.00.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application for a total monetary award of \$4,360.00.

The landlord continues to hold a security deposit of \$1000.00. I allow the landlord to retain the security deposit in partial satisfaction of the monetary award pursuant to section 38 of the Act.

Therefore, I find that the landlord is entitled to a Monetary Order in the amount of \$3,360.00.

As this tenancy has ended pursuant to the 10 Day Notice, I make no finding on the merits of the One Month Notice.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant(s) fail to comply with this Order; this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to section 67 of the *Act*, I grant the landlord a Monetary Order in the amount of \$3,360.00. Should the tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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 10, 2020

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Residential Tenancy Branch