



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      CNR

### Introduction

This hearing dealt with an application by the tenant pursuant to the Residential Tenancy Act (the “Act”) for cancellation of the 10-Day Notice to End Tenancy for Unpaid Rent (the “10-Day Notice”) pursuant to section 46.

JC (the “landlord”) and EN (the “tenant”) appeared at the hearing.

The tenant testified that he did not serve the Notice of Dispute Resolution Proceeding or supporting documents on the landlord. The landlord confirmed that he did not receive the Notice of Dispute Resolution Proceeding or supporting documents from the tenant. However, the landlord indicated that he would like to proceed with the hearing in the absence of service. On that basis, I proceeded with the hearing.

JC testified that he served his supporting documents and evidence on the tenant by registered mail on March 28<sup>th</sup>, 2023. In support of this the landlord provided a Canada Post Tracking Number. The tenant testified that he did not receive the landlord’s supporting documents and evidence by registered mail. However, based on the landlord’s testimony and considering that the registered mail package was only recently sent to the tenant, I find I am satisfied in accordance with section 71(2)(b) of the Act that the landlord’s supporting documents and evidence have been sufficiently served on the tenant.

The parties were given full opportunity under oath to be heard, to present evidence and to make submissions. The parties confirmed they were not recording the hearing pursuant to Rule of Procedure 6.11.

Issue(s) to be Decided

1. Is the tenant entitled to an order cancelling the 10-Day Notice?
2. If the tenant is not entitled to an order cancelling the 10-Day Notice, is the landlord entitled to an Order of Possession and Monetary Order for unpaid rent?

Background and Evidence

I have considered the documentary evidence and the testimony of the parties; however, not all of the details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties agree that the tenancy commenced on September 1, 2020. Rent is \$525.00 due on the first of the month. The landlord collected a security deposit of \$262.50 which the landlord continues to hold in trust.

The landlord testified that they served the tenant with a copy of the 10-Day Notice in person on March 7, 2023, because the tenant failed to pay rent in March. The tenant acknowledged receipt of the 10-Day Notice.

The landlord further testified that at the time the 10-Day Notice was issued, rent was outstanding in the amount of \$750.00 because the tenant had previously failed to pay rent in July 2022. The landlord testified that the tenant had been paying back the July 2022 rent but had not paid the outstanding rent in full as of March 2023. The landlord submitted a schedule of payments into evidence which shows that \$750.00 was outstanding when the 10-Day Notice was issued.

The landlord further testified that the tenant did not pay rent in April 2023 and therefore, rent is currently outstanding in the amount of \$1,275.00. The landlord is seeking an Order of Possession and Monetary Order in the amount of \$1,275.00.

The tenant did not dispute the landlord's testimony but rather confirmed that they did not pay rent in July 2022 and that they had been paying it back slowly over time. The tenant also confirmed that they did not pay rent in March or April 2023. The tenant indicated that they held the rent back because the landlord neglects his responsibilities.

### Analysis

Based on the evidence and testimony of the parties, I find the tenant was served with the 10-Day Notice in accordance with the Act.

The undisputed evidence of the landlord is that he served the tenant with the 10-Day Notice because he failed to pay rent in March 2023. The 10-Day Notice is included in the evidence. I find the 10-Day Notice meets the form and content requirements of section 52 of the Act.

I find the landlord is entitled to an Order of Possession under section 55(1) of the Act which will be effective two days after service on the tenant.

Since the landlord's application relates to a section 46 notice to end tenancy, the landlord is also entitled to an order for unpaid rent under section 55(1.1) of the Act. The landlord's undisputed evidence is that rent is currently outstanding in the amount of \$1,275.00. Therefore, the tenant is ordered to pay \$1,275.00 to the landlord.

The landlord continues to hold the tenant's security deposit of \$262.50 in trust for the tenant. In accordance with the off-setting provisions of section 72 of the Act, I order the landlord to retain the tenant's security deposit in partial satisfaction of the Monetary Order.

### Conclusion

The landlord is granted an Order of Possession which will be effective two days after service on the tenant. The Order of Possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

I issue a Monetary Order in the Landlord's favour in the amount of \$1,012.50 as follows:

Item	Amount
Rent Due March and April 2023 (2 x \$525.00)	\$1,050.00
Outstanding Rent Due July 2022	\$225.00
Security Deposit	-\$262.50
<b>Total Monetary Order</b>	<b>\$1,012.50</b>

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 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: April 12, 2023

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Residential Tenancy Branch