



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## Introduction

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This hearing dealt with the Tenant's and Landlord's Applications under the *Residential Tenancy Act* (the Act).

The Tenant applied to cancel the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice), and for more time to file this application after receiving the 10 Day Notice.

The Landlord applied for an Order of Possession of the rental unit, for a Monetary Order for unpaid rent, and to recover the filing fee from the tenant.

I find the Landlord acknowledged receiving the Tenant's hearing package on August 21, 2023. Based on the Landlord's undisputed testimony and the proof of service documents they submitted as evidence, I find that the Landlord's hearing package and evidence are deemed served to the Tenant on September 11, 2023, five days after being sent by registered mail.

## Issues to be Decided

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Is the Tenant allowed more time to file the application to cancel the 10 Day Notice?

Should the landlord's 10 Day Notice be cancelled?

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a Monetary Award for Unpaid Rent or Utilities?

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

## Facts and Analysis

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This tenancy began on October 1, 2022, with a monthly rent of \$1,595.00 due the first day of each month, and with a security deposit of \$797.00 and pet damage deposit of \$797.00.

The Landlord testified as follows. The Tenant did not pay rent in December 2022. The Landlord issued a 10 Day notice for unpaid rent in December 2022, but rescinded the

Notice after they came to an agreement with the Tenant that the Tenant would pay the outstanding rent by February 15, 2023.

The Tenant paid the December 2022 rent in January 2023. The Tenant did not pay rent for January 2023. The Tenant paid partial rent between \$850.00 to \$1350.00 each month from February 2023 to June 2023. The Landlord knew the Tenant was having financial difficulties, and was willing to give the Tenant time to pay the rent arrears. The Tenant promised to pay the arrears when they could. The Landlord offered to reduce the Tenant's arrears in exchange for yardwork completed by the Tenant. The Landlord granted a total of \$400.00 off the Tenant's arrears for work completed.

In July 2023, the Tenant paid only \$700.00 for rent. The Landlord issued the 10 Day Notice on August 1, 2023. The arrears total at the time of the 10 Day Notice was \$4515.00. The Tenant did not pay rent for August 2023 and September 2023. The Tenant did not move out of the rental unit. The total arrears are \$7705.00.

The Landlord submitted documentary evidence to support their claims.

**Is the Tenant allowed more time to file the application to cancel the 10 Day Notice?**

Based on the Landlord's undisputed testimony and evidence, I find the Landlord served the 10 Day Notice to the Tenant by posting to the door of the rental unit on August 1, 2023. I find the Landlord's 10 Day notice has an effective date of August 14, 2023.

I find the Tenant filed their application to cancel the 10 Day Notice on August 17, 2023, three days after the effective date of the Notice. In accordance with section 66(3) of the Act, the deadline to file an application to cancel a Notice to End Tenancy cannot be extended past the effective date of the Notice. The Tenant's request for more time to file the application to cancel the 10 Day Notice is dismissed, without leave to re-apply.

**Should the landlord's 10 Day Notice be cancelled?**

Based on the Landlord's undisputed testimony and supporting evidence, I find the Tenant breached the Act by not paying rent from January 2023 to September 2023. I find that the Landlord had a valid reason to issue the 10 Day Notice under section 46 of the Act. The Tenant's application to cancel the 10 Day Notice is dismissed, without leave to re-apply.

**Is the landlord entitled to an Order of Possession?**

I find the 10 Day Notice issued by the Landlord meets the requirements for form and content under section 52 of the Act. I find the Landlord is entitled to an Order of Possession under section 55 of the Act.

### **Is the landlord entitled to a Monetary Award for Unpaid Rent or Utilities?**

I find the tenant failed to pay \$7705.00 in rent from January 2023 to September 2023. I find the Landlord is entitled to a Monetary Order for unpaid rent under section 55(1.1) of the Act.

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

As the landlord was successful in this application, I find that the landlord is entitled to recover the filing fee from the tenant under section 72 of the Act.

## **Conclusion**

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### **Landlord's Order of Possession**

Under sections 46 and 55 of the Act, I find the Landlord is entitled to an Order of Possession. This Order is effective **2 Days after serving this order to the Tenant**, and the Tenant and anyone else occupying the unit must move out 2 days after receiving this Order.

If the Tenant does not move out within 2 days, this Order can be filed in the Supreme Court and enforced as an order of that court. The costs of this enforcement are recoverable from the tenant.

The Tenant is reminded that they are obligated to leave the rental unit reasonably clean and free from damage. The Landlord is reminded to schedule and complete a move out inspection.

### **Monetary Order for Unpaid Rent**

Under sections 55(1.1) and 72 of the Act, I find that the landlord is entitled to monetary order for the unpaid rent of \$7750.00, and to recover their filing fee of \$100.00. I order that the landlord retain the security deposit of \$1595.00 with interest in partial satisfaction of the claim. I grant the landlord a monetary order for the balance due of **\$6187.08**.

This order must be served to the tenant. If the tenant does not pay, the order may be filed and enforced in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

<b>Monetary Issue</b>	<b>Granted Amount</b>
Unpaid rent	\$7705.00
Landlord's Filing Fee	\$100.00
Security Deposit with interest	- \$1617.92
<b>Total Amount</b>	<b>\$6187.08</b>

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: October 3, 2023

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Residential Tenancy Branch