



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, LRE, OLC, OPR, MNR, MND, FF

### Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”).

The Tenant applied on March 12, 2019 for:

1. An Order cancelling a notice to end tenancy - Section 46;
2. An Order suspending or setting conditions on the landlord's right of entry - Section 70; and
3. An Order for the Landlord to comply - Section 62.

The Landlord applied on March 22, 2019 for:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent or utilities - Section 67;
3. A Monetary Order for damage to the unit - Section 67; and
4. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

### Preliminary Matter

The Parties confirm that other than the Tenant who appeared at the hearing the other named tenants are children under the age of 12 years. Based on these agreed facts that the other named tenants are children I will make any monetary order that may result from this hearing solely in the name of the Tenant who appeared.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the Landlord entitled to an order of possession?

Is the Landlord entitled to the monetary amounts claimed?

Is the Tenant entitled to an order for compliance and an order restricting the Landlord's access?

Background and Evidence

The following are agreed facts: There is no written tenancy agreement. The tenancy started on November 1, 2019. Although a security deposit of \$500.00 was paid by another person prior to the start of this tenancy, the Landlord continues to hold this amount for the current tenancy. Rent of \$1,000.00 is payable on the first day of each month. The Tenant owed rental arrears of \$500.00 for February 2019 and did not pay any rent for March 2019. On March 8, 2019 the Landlord served the Tenant with a 10 day notice to end the tenancy for unpaid rent (the "Notice") by posting the Notice on the door of the unit. The Notice sets out unpaid rent of \$1,500.00 and the Parties confirm that this amount is for rental arrears for February and March 2019. On April 18, 2019 the Tenant attempted to pay \$200.00 of the rental arrears to the Landlord by leaving this sum in the laundry room for the Landlord with text notification to the Landlord. The Landlord did not collect this money and the Tenant took it back. The Tenant did not pay April 2019 rent. The Tenant owes \$2,500.00 in unpaid rent for February, March and April 2019.

The Tenant states that before the Notice was given the Tenant made an offer to the Landlord for payments on late rents. The Tenant states that the Landlord was initially agreeable to a running balance owing however no details or specifics were ever agreed upon. The Landlord states that the Tenant is not paying any rent and only made the offer of \$200.00. The Landlord seeks an order of possession and is agreeable to an order of possession to be effective April 30, 2019.

### Analysis

Section 26(1) of the Act provides 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. Section 1 of the Act provides that "**tenancy agreement**" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a license to occupy a rental unit. Although there is no written agreement based on the undisputed facts of the oral rental agreement and on the undisputed facts of the amount of rent I find that a valid tenancy was created and that the Tenant was required to pay rent of \$1,000.00 on the first day of each month. Although the Tenant gives evidence of a different agreement on rent payments, given the Tenant's evidence that no details were confirmed or agreed to prior to the provision of the Notice, I find that there is insufficient evidence to support that the Parties agreed to alter the terms of rent payable.

Section 46 of the Act requires that upon receipt of a 10 notice to end tenancy for unpaid rent 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 (the "RTB"). A financial inability to pay rent is not a valid basis to find that the Tenant was not obliged to pay the rent as agreed. For this reason and based on the undisputed evidence that the Tenant did not pay the full amount of the rent indicated on the Notice within 5 days receipt of the Notice I find that the Notice is valid and I dismiss the Tenant's claim to cancel the Notice. Based on the undisputed evidence of unpaid rent, I find that the Landlord is entitled to unpaid rent of **\$2,500.00**.

Section 55(1) provides that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, an order of possession must be granted to the landlord if, the notice to end tenancy complies in form and content and the tenant's application is dismissed or the landlord's notice is upheld. Section 52 of the Act

provides that In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.

Considering that the required form and content is contained on the Notice and given the validity of the Notice I find that the Landlord is entitled to an order of possession. As the tenancy will end and as the Tenant's claims for orders for compliance or access are only relevant to an ongoing tenancy I dismiss the Tenant's claims for these orders and in effect the Tenant's application is dismissed in its entity. The Parties were orally provided with the provisions of the Act that speak to landlord and tenant rights in relation to access to the unit and both confirmed their understanding of such access.

Section 37(2)(a) of the Act provides that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. As the tenancy was not over at the time the Landlord made its application claiming damage to the unit and as the Tenant has until the end of the tenancy to leave the unit without damage beyond wear and tear I dismiss the Landlord's monetary claim for damage to the unit with leave to reapply.

As the Landlord's application has been primarily successful I find that the Landlord is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$2,600.00**.

Deducting the security deposit of **\$500.00** plus zero interest leaves **\$2,100.00** owed by the Tenant to the Landlord.

Conclusion

**I grant** an Order of Possession to the Landlord effective 1:00 p.m. on April 30, 2019. The Tenant must be served with this **Order of Possession**. Should the Tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

**I order** that the Landlord retain the **deposit** and interest of \$500.00 in partial satisfaction of the monetary claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **\$2,100.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the RTB under Section 9.1(1) of the Act.

Dated: April 24, 2019

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Residential Tenancy Branch