



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, OLC, FFT  
OPRM-DR, FFL

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “*Act*”). The matter was set for a conference call.

The Tenant’s Application for Dispute Resolution was made on April 11, 2019. The Tenant applied to cancel a 10-Day Notice to End Tenancy for Unpaid Rent, (the “Notice”) issued on April 4, 2019, for an order for the Landlord to comply with the *Act* and/or tenancy agreement, and to recover the filing fee paid for this application. The Landlord’s Application for Dispute Resolution was made on April 11, 2019. The Landlord applied for an order of possession to enforce a 10-Day Notice for Unpaid Rent and Utilities (the Notice) issued on April 4, 2019, for a monetary order for unpaid rent and utilities, and to recover the filing fee paid for this application.

The Landlord attended the conference call hearing; however, the Tenant did not. As the Tenant is also an applicant in this hearing, I find that the Tenant had been duly notified of the Notice of Hearing in accordance with the *Act*.

The Landlord was affirmed to be truthful in his testimony and was provided with the opportunity to present his evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

### Issues to be Decided

- Should the Notice to End Tenancy be cancelled?
- If not, is the Landlord entitled to an order of possession pursuant to section 55 of the Act?
- Is the Landlord entitled to a monetary order for unpaid rent and utilities?
- Is the Landlord entitled to the return of his filing fee?
- Should the Landlord be ordered to comply with the Act and/or tenancy agreement?
- Is the Tenant entitled to the return of his filing fee?

### Background and Evidence

The Landlord testified that the tenancy began on July 1, 2018, as a one-year fixed term tenancy. Rent in the amount of \$2,200.00 is to be paid by the first day of each month, and that the Tenant paid the Landlord a \$1,100.00 security deposit.

The Landlord testified that he served the Notice to the Tenant on April 4, 2019, by personally serving it to the Tenant. The Notice has an effective date of April 14, 2019, and an outstanding rent amount of \$2,200.00. The Landlord also testified that the Tenant has made a partial payment to the rent for April 2019, but that the full balance, as indicated on the Notice, had not been paid. The Landlord also testified that the Tenant has only made partial payments to the rent for the March and April 2019 and nothing toward the May 2019 rent. The Landlord testified that as of the date of this hearing the Tenant is past due \$6,800.00 in rent; consisting of \$1,450.00 for February, \$1,450.00 March, \$1,700.00 for April and \$2,200.00 for May 2019.

The Landlord is requesting that the Notice to end tenancy be enforced, that an order of possession is issued, as well as a monetary order for the unpaid rent.

### Analysis

Based on the above, the oral testimony and the documentary evidence, and on a balance of probabilities, I find as follows:

I accept the testimony of the Landlord that he served the Tenant with the Notice to end on April 4, 2019, by personally serving the Notice to the Tenant. I find that the Tenant received the Notice the same day it was served, on April 4, 2019, and that the Tenant did apply to dispute the Notice.

The Tenant's application to dispute the Notice was set for hearing by a telephone conference call at 9:30 a.m. on this date. The line remained open while the phone system was monitored, and the only participant who called into the hearing was the Landlord.

Rules 7.1, 7.3 and 7.4 of the Rules of Procedure provide as follows:

**7.1 Commencement of the dispute resolution hearing**

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

**7.3 Consequences of not attending the hearing**

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

**7.4 Evidence must be presented**

Evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

Therefore, as the Tenant did not attend the hearing, I dismiss the Tenant's application without leave to reapply.

Section 55(1) of the *Act* states:

**Order of possession for the landlord**

**55(1)** If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I have reviewed the Notice to end the tenancy, and I find the Notice complies with section 52 of the *Act*.

Therefore, I find that the Landlord is entitled to an order of possession, pursuant to section 55 of the *Act*. I grant the Landlord an **Order of Possession** effective **two days** after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that the costs of such enforcement are recoverable from the tenant.

Additionally, I accept the testimony of the Landlord that the Tenant has not paid the outstanding rent as indicated on the Notice, nor has the Tenant paid the full rent for March, April and May 2019. I find that the Landlord has established an entitlement to a monetary award for the outstanding rent, and I authorized the Landlord to retain the Tenant's security deposit as partial satisfaction of this award.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has been successful in his application, I find the Landlord is entitled to recover the \$100.00 filing fee for his application.

I grant the Landlord a **Monetary Order** in the amount of **\$5,800.00**; consisting of \$6,800.00 in outstanding rent for the months of February, March, April and May 2019, \$100.00 in the recovery of the Landlord's filing fee, less the \$1,100.00 the Landlord is holding in a security deposit for this tenancy.

### Conclusion

The Tenant's application is dismissed, without leave to reapply.

I grant an **Order of Possession** to the Landlord effective not later than **2 days** after service upon the Tenant. The Tenant must be served with this Order. Should the Tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I grant the Landlord a **Monetary Order** in the amount of **\$5,800.00**. The Landlord is provided with this Order in the above terms, and 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: May 28, 2019

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Residential Tenancy Branch