



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNRL, FFT

### Introduction

This file originated as a Direct Request proceeding and was scheduled for a participatory hearing in an Interim Decision dated March 29, 2019. This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent, pursuant to sections 46 and 55;
- a Monetary Order for unpaid rent, pursuant to sections 26 and 67; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:43 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. The landlord and his co-landlord attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord, the co-landlord and I were the only ones who had called into this teleconference.

The landlord testified that he served the tenant with the Interim Decision and Notice of Hearing documents via registered mail on April 3, 2019. A Canada Post receipt and tracking number were entered into evidence to confirm this registered mailing. I find that the tenant was deemed served with the above items on April 8, 2019, five days after their mailing, in accordance with sections 88, 89 and 90 of the *Act*.

### Issues to be Decided

1. Is the landlord entitled to an Order of Possession for unpaid rent, pursuant to sections 46 and 55 of the *Act*?
2. Is the landlord entitled to a Monetary Order for unpaid rent, pursuant to sections 26 and 67 of the *Act*?
3. Is the landlord entitled to recover the filing fee from the tenant, pursuant to section 72 of the *Act*?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the landlord and the co-landlord, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord provided the following undisputed testimony. This tenancy began on March 1, 2016. The tenant has not moved his possessions out of the subject rental property and has avoided contact with the landlord. The tenant has not provided the landlord with a notice to end tenancy. When the tenancy first started, monthly rent in the amount of \$1,100.00 was payable on the first day of each month. On December 1, 2018 the landlord posted a Notice of Rent Increase on the tenant's door (the "Notice of Rent Increase"). The Notice of Rent increase increased the tenant's rent by \$25.00 per month effective March 1, 2019.

The landlord provided the following undisputed testimony. The parties had an oral agreement to share internet and the tenant agreed to pay the landlord \$40.00 per month for internet. The landlord testified that the tenant has been paying \$40.00 per month for internet since early 2018. A security deposit of \$550.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The landlord provided the following undisputed testimony. The tenant failed to pay March 2019's rent on March 1, 2019, when it was due. On March 10, 2019 a 10 Day Notice to End Tenancy for Unpaid Rent with an effective date of March 10, 2019 (the "10 Day Notice") was posted on the tenant's door. A witnessed proof of service document was entered into evidence.

The landlord testified that the tenant has not paid rent or his internet bill for March, April or May 2019.

The tenant has not filed an application to cancel the 10 Day Notice.

### Analysis

Section 88 of the *Act* states that a 10 Day Notice may be served on the tenant by posting a copy on the tenant's door. I find that service of the 10 Day Notice was effected on March 13, 2019, three days after its posting, in accordance with section 88 and 90 of the *Act*.

Based on the undisputed testimony of the landlord, I find that the tenant failed to pay rent and internet for the months of March, April and May 2019.

The tenant failed to pay March 2019's rent within five days of receiving the 10 Day Notice. The tenant has not made application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenant's failure to take either of these actions within five days led to the end of his tenancy on the effective date of the notice.

Section 53(2) of the *Act* states that if the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section. The earliest date permitted under section 46 is March 18, 2019. I find that the corrected effective date of the 10 Day Notice is March 18, 2019.

As the tenant did not move himself and his possessions out of the subject rental property by March 18, 2019, I find that the landlord is entitled to a 2-day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Section 42(2) of the *Act* states that a landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase. I find that service of the Notice of Rent Increase on the tenant was deemed effected on December 4, 2018,

three days after its posting on the tenant's door, in accordance with section 90 of the *Act*. Pursuant to section 42(2) the landlord must provide the tenant with three entire months' notice, in this case, December 2018 is not a full month and is not counted as one of the three months' notice. Pursuant to section 53(2) of the *Act*, I find that the earliest effective date that complies with section 42(2) of the *Act* is April 1, 2019. The corrected effective date of the Notice of Rent Increase is April 1, 2019.

Section 26(1) of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*. I find that the tenant was obligated to pay the monthly rent in the amount of \$1,100.00 on March 1, 2019 and monthly rent in the amount of \$1,125.00 for the months of April and May 2019 which he failed to do. Pursuant to section 67 of the *Act*, I find that the tenant owes the landlord \$3,350.00 in unpaid rent.

I accept the landlord's undisputed testimony that he and the tenant had a verbal agreement whereby the tenant would pay him \$40.00 per month for internet. I find that the tenant failed to pay \$40.00 per month for the months of March to April 2019. I therefore find that the tenant owes the landlord \$120.00 for internet charges from March to April 2019.

Section 72(2) states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit due to the tenant. I find that the landlord is entitled to retain the tenant's entire security deposit in the amount of \$550.00 in part satisfaction of his monetary claim for unpaid rent against the tenant.

As the landlord was successful in his application, I find that he is entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

### Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service on the tenant**. 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 issue a Monetary Order to the landlord under the following terms:

Item	Amount
March 2019 rent	\$1,100.00
April 2019 rent	\$1,125.00
May 2019 rent	\$1,125.00
Filing Fee	\$100.00
Less security deposit	-\$550.00
<b>TOTAL</b>	<b>\$2,900.00</b>

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 17, 2019

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Residential Tenancy Branch