



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** AS CNR DRI FFT MNDCT MT OLC FFL OPRM-DR

### **Introduction**

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlord requested:

- an Order of Possession for unpaid rent pursuant to section 55; and
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant requested:

- more time to make an application to cancel the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 66;
- cancellation of the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- a determination regarding their dispute of an additional rent increase by the landlord pursuant to section 43;
- an order to suspend or set conditions on the landlord’s right to enter the rental unit pursuant to section 70;
- an order allowing the tenant to assign or sublet because the landlord’s permission has been unreasonably withheld pursuant to section 65; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*.

While the landlord attended the hearing by way of conference call at 9:30 a.m., the tenant did not. I waited until 9:42 a.m. to enable the tenant to participate in this scheduled hearing for 9:30 a.m. The landlord was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The tenant was in attendance for a different conference call set for 1:30 p.m. The tenant stated that he had called in with his participant code at 9:30 a.m. for his hearing, and had been on hold waiting for the hearing to commence. As another hearing was scheduled for 1:30 pm with the same participant code, and as the tenant's hearing had already taken place earlier in the day 9:30 a.m., the tenant was informed that his matter was dealt with earlier in the day, and to contact the RTB office with any questions about his application and hearing. The tenant exited the hearing at 1:36 p.m.

As the tenant indicated that he was present for the 9:30 a.m. hearing, I checked the teleconference call reports to confirm whether the tenant was in attendance for the conference call set for 9:30 a.m. During the 9:30 a.m. hearing I confirmed from the online teleconference system that the landlord and I were the only ones who had called into this teleconference. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing.

The teleconference report for January 6, 2019 show that only the landlord and I were in attendance for the teleconference call from 9:30 a.m. to 10:42 a.m. The reports show that a party called into the teleconference call at 10:45 a.m. and remained on the line for 111 minutes. The same party called into the teleconference call again at 10:45 a.m., and remained on the line until 1:36 p.m.

Rule 7.3 of the Rules of Procedure provides as follows:

**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.

I am satisfied that the tenant failed to attend the teleconference call as scheduled for 9:30 a.m. The hearing commenced at 9:30 a.m., and the line was held open for the tenant to attend until 9:42 a.m. when the hearing concluded. As the tenant did not attend this hearing as scheduled, and in the absence of submissions from the tenant during the hearing, their application is dismissed without leave to reapply.

The landlord gave sworn testimony that copies of the Application for Dispute Resolution hearing package ('Application') and evidence were served to the tenant by way of registered mail on November 19, 2019. The landlord included copies of the tracking information and receipts in their evidentiary materials. In accordance with sections 88, 89, and 90 of the *Act*, I find that the

tenant deemed served with the landlord's application and evidence on November 24, 2019, 5 days after mailing.

The landlord provided undisputed testimony that the tenant was served with a 10 Day Notice for unpaid rent dated October 24, 2019, with a corrected, effective date of November 9, 2019, by way of registered mail on October 25 2019. In accordance with sections 88 and 90 of the *Act*, I find that the tenant deemed served with the 10 Day Notice on October 30, 2019, 5 days after mailing.

Although the landlord had applied for a Monetary Order of \$850.00 in their initial claim, since they applied another \$3,350.00 in rent has become owing that was not included in the original application. RTB Rules of Procedure 4.2 allows for amendments to be made in circumstances where the amendment can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made. On this basis, I have accepted the landlord's request to amend their original application from \$850.00 to \$4,200.00 to reflect the unpaid rent that became owing by the time this hearing was convened.

### **Issue(s) to be Decided**

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a monetary award for unpaid rent or money owed under the tenancy agreement, regulation, or *Act*?

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

### **Background and Evidence**

The landlord gave undisputed testimony regarding the following facts. This month-to-month tenancy began in June of 2018 when the tenant had rented out the basement portion of the home. Both parties signed a new agreement to commence December 1, 2018 for the entire house. Monthly rent was set at \$2,800.00, payable on the first of every month. The landlord included a copy of this agreement in their evidentiary materials. The landlord testified that the tenant only paid a portion of the \$1,400.00 security deposit that was to be paid for the new tenancy agreement. The landlord testified that the tenant paid \$650.00 towards the security deposit, which he still holds.

The landlord issued the 10 Day Notice for Unpaid rent dated October 24, 2019 as the failed to pay all his outstanding rent for October 2019, plus the \$250.00 that was previously owing. At the time the 10 Day Notice was issued, the tenant owed \$3,050.00 in outstanding rent. The landlord confirmed the following payments from the tenant for use and occupancy only since the 10 Day Notice was issued, but is still seeking a monetary order for the money still owing: \$2,200.00 paid

on November 1, 2019, \$1,500.00 paid on November 30, 2019, and \$750.00 paid on December 27, 2019. At the time of the hearing, the tenant owed \$4,200.00 in outstanding rent for this tenancy.

### **Analysis**

Section 55(1) of the *Act* reads as follows:

**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 find that the 10 Day Notice complies with section 52 of the *Act*. Based on my decision to dismiss the tenant's application for dispute resolution and pursuant to section 55(1) of the *Act*, and as the corrected effective date of the 10 Day Notice has passed, 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.

The landlord provided undisputed evidence that the tenant failed to pay the rent in the amount of \$4,200.00. Therefore, I find that the landlord is entitled to \$4,200.00 in arrears for the above period.

The landlord continues to hold the tenant's security deposit in the amount of \$650.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's security deposit in partial satisfaction of the monetary claim.

I find that the landlord is entitled to recovery the \$100.00 filing fee from the tenant.

### **Conclusion**

I dismiss the tenants' entire application without leave to reapply.

I grant an Order of Possession to the landlord effective **two (2) days after service on the tenants**. Should the tenant or anyone on the premises 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 \$3,650.00 Monetary Order in favour of the landlord under the following terms, which allows the landlord to recover unpaid rent and the filing fee, and also allows the landlord to retain the tenant's security deposit in partial satisfaction of the rent owing:

| Item                        | Amount            |
|-----------------------------|-------------------|
| Unpaid Rent                 | \$4,200.00        |
| Recovery of Filing Fee      | 100.00            |
| Less Security Deposit       | -650.00           |
| <b>Total Monetary Order</b> | <b>\$3,650.00</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: January 7, 2020

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Residential Tenancy Branch