



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: OPR, MNRL-S, FFL (for Landlord)  
CNR (for Tenant)

### **Introduction**

In this dispute, the landlord sought an order of possession pursuant to section 55(2)(b) of the *Residential Tenancy Act* (the “Act”), a monetary for unpaid rent pursuant to sections 26(1) and 67 of the Act, and, recovery of the filing fee under section 72 of the Act. The tenant filed a cross-application seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent (the “10 Day Notice”).

The landlord applied for dispute resolution on February 24, 2020 and the tenant filed their application on February 18, 2020. A dispute resolution hearing convened, by way of telephone conference, on Friday, March 27, 2020 at 1:30 PM. The landlord and their two advocates attended, and they were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The tenant did not attend.

I have reviewed evidence submitted that met the *Rules of Procedure* and to which I was referred but have only considered evidence relevant to the issues of this application. As the tenant did not attend the hearing, I will not consider any submissions or evidence as it pertains to their application.

### **Issues**

1. Is the landlord entitled to an order of possession for unpaid rent?
2. Is the landlord entitled to compensation for unpaid rent?
3. Is the landlord entitled to recovery of the filing fee?
4. Is the tenant entitled to an order cancelling the 10 Day Notice?

### Background and Evidence

The landlord testified that the tenancy started on January 1, 2020 and submitted a copy of a written tenancy agreement into evidence. Monthly rent, due on the first of the month, is \$2,300.00. A security deposit of \$1,1500.00 was paid by the tenant; there is no pet damage deposit.

The landlord testified that they served the 10 Day Notice, a copy of which was submitted into evidence, on the tenant by posting it on the door on February 6, 2020. Included in the landlord's evidence were several photographs which depict the 10 Day Notice being put into an envelope which was then taped to the front door of the rental unit. Photographs from the street depict an occupied house, which the lights on and vehicles parked in the driveway.

In it, the 10 Day Notice indicated that rent in the amount of \$2,300.00 was due on February 1, 2020. To date, the landlord testified that the tenant now owes the landlord \$4,600.00, for unpaid rent for February and March 2020.

It should be noted that at the start of the hearing, when we were waiting for the tenant to join, the landlord's advocate advised me that they had received an email from the tenant "two days ago" (that is, March 25, 2020, or thereabouts) in which the tenant told the landlord that they would be moving out on Saturday, March 28, 2020.

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

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, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent." In this case, the tenant did not pay rent when it was due under the tenancy agreement, namely, on the first of the month.

After the tenant did not pay rent, the landlord issued the 10 Day Notice pursuant to section 46(1), which states that "a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice." Once a notice to end a tenancy is

considered served by the landlord, they have 5 days to pay the rent or file an application for dispute resolution.

The landlord or their advocate testified that the 10 Day Notice gave notice on February 6, 2020, with the tenancy to end on February 20, 2020. Under section 90(c) of the Act, the 10 Day Notice is deemed to have been received by the tenant on the third day after it was attached to the door of the rental unit. Thus, the tenant had until February 14, 2020, in which to either pay the rent or file for dispute resolution. I find that they did neither (the tenant did not apply until February 18, 2020, outside the deadline under the Act), in which case section 55(2)(b) of the Act comes into play.

Section 55(2)(b) states that a landlord may request – and shall be granted – an order of possession when “a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired.” Having found that this is the case, I grant the landlord an order of possession pursuant to sections 55(2)(b) and 55(4)(a) of the Act.

Taking into consideration all the undisputed oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving that the tenant owes rent arrears in the amount of \$4,600.00. Further, and pursuant to sections 67 and 55(4)(b) of the Act (which states that “if the application is in relation to the non-payment of rent, [an arbitrator may] grant an order requiring payment of that rent), I grant a monetary award to the landlord for unpaid rent in the amount of \$4,600.00.

Finally, section 72(1) of the Act provides that an arbitrator may order payment of a fee under section 59(2)(c) by one party to a dispute resolution proceeding to another party. A successful party is generally entitled to recovery of the filing fee. As the landlord was successful, I grant their claim for reimbursement of the \$100.00 filing fee.

A total monetary award of \$4,700.00 and a monetary order of \$3,550.00 for the landlord is thus calculated as follows:

Claim	Amount
Unpaid rent	\$4,600.00
Filing fee	\$100.00
<i>LESS</i> security deposit	(\$1,150.00)
Total:	\$3,550.00

Pursuant to section 38(4)(b) of the Act, I order that the landlord retain the security deposit in partial satisfaction of the above-noted award.

Conclusion

I grant the landlord a monetary order in the amount of \$3,550.00, which must be served on the tenant. The order may be filed in, and enforced as an order of, the Provincial Court of British Columbia.

I grant the landlord an order of possession, which must be served on the tenant and which is effective two days from the date of service. This order may be filed in, and enforced as an order of, the Supreme Court of British Columbia.

I dismiss the tenant's application without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: March 27, 2020

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Residential Tenancy Branch