



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, FF

### Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

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

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

### Issue(s) to be Decided

Is the Landlord entitled to an order of possession?

Is the Landlord entitled the monetary amounts claimed?

### Background and Evidence

The following are agreed facts: The tenancy under written agreement started on September 21, 2019. Rent of \$1,400.00 is payable on the first day of each month. At the outset of the tenancy the Landlord collected \$700.00 as a security deposit. The Tenant failed to pay rent for January and on January 8, 2020 the Landlord served the Tenant with a 10 day notice to end tenancy for unpaid rent (the “Notice”) by posting the Notice on the door. The Notice sets out that rent of \$1,400.00 due January 1, 2020 was outstanding. The effective date of that Notice is set out as January 20, 2020. Since

serving the Notice the Landlord has received \$300.00 for January 2020 rent. No further rents have been paid to the Landlord, including February and March 2020.

The Tenant states that it believed it disputed the Notice but may have been late in making the application. The Tenant was unable to locate the file number for this application. The Tenant states that the Landlord has not done needed repairs to the unit and has entered the unit without right. The Tenant states that due to financial difficulties the Tenant has been unable to pay the rent.

### Analysis

Section 46(1) of the Act provides that a landlord may end 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. Section 46(4) of the Act provides that within 5 days after receiving a notice under this section, the tenant may pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution. Section 26 of the Act provides that a tenant must pay the rent when and as provided under the tenancy agreement whether or not the landlord complies with this Act, the regulations or the tenancy agreement.

Based on the undisputed evidence of unpaid rent and the service of the Notice, and as rent is payable regardless of the Landlord's lack of repairs, I find that the Notice is valid. Based on the undisputed evidence of unpaid rent I find that the Landlord has substantiated an entitlement to **\$1,100.00** for January, **\$1,400.00** for February and **\$1,400.00** for March 2020 rents.

Section 55(1) of the Act provides that 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 and

(b)the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Section 53 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,
- (d.1)for a notice under section 45.1 *[tenant's notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 *[confirmation of eligibility]*, and
- (e)when given by a landlord, be in the approved form.

As the Notice has been found to be valid and as it complies in form and content, I find that the Landlord is entitled to an order of possession. I grant the Landlord an order of possession effective two days after service of this order on the Tenant.

As the Landlord's application has been successful, I find that the Landlord is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$3,900.00**. Deducting the security deposit of **\$700.00** plus zero interest from the Landlord's entitlement leaves **\$3,200.00** owed to the Landlord.

### Conclusion

**I grant** an Order of Possession to the Landlord. 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 \$700.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **\$3,200.00**. 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 Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: March 25, 2020

---

Residential Tenancy Branch