



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNRL-S, FFL

### Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution, filed on January 20, 2020, in which the Landlord sought an Order of Possession and monetary compensation based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on January 4, 2020 (the "Notice"), as well as recovery of the filing fee.

The hearing of the Landlord's Application was scheduled for teleconference at 9:30 a.m. on March 19, 2020.

Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me. The Landlord also had a witness, F.T., call into the hearing. As F.T.'s evidence relating to a 1 Month Notice to End Tenancy for Cause issued on February 28, 2020, and that matter was not part of the Landlord's Application, I excused F.T. from the hearing at 9:34 a.m.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Matters

The Landlord inverted the Tenant's given name and surname on the Application for Dispute Resolution. Section 64(3)(c) of the *Act* allows me to amend an Application; as such, I amend the Landlord's Application to correctly name the Tenant.

The Landlord provided a Monetary Orders Worksheet in which he claimed compensation for March rent, as well as repairs and cleaning of the rental unit. The Landlord confirmed no rent was outstanding at the time of the hearing.

Further, as the Landlord failed to Amend his Application, the Tenant was not given proper notice of the Landlord's request for cleaning and repair costs. As discussed during the hearing, the Landlord is at liberty to make a further application for monetary compensation including such costs.

Similarly, the Landlord also provided a copy of a 1 Month Notice to End Tenancy for Cause, issued on February 28, 2020. This was also not related to the Landlord's Application filed January 20, 2020 and is not properly before me. I therefore did not consider the validity of the 1 Month Notice.

The parties confirmed their email addresses during the hearing as well as their understanding that this Decision would be emailed to them.

### Issues to be Decided

1. Is the Landlord entitled to an Order of Possession?
2. Is the Landlord entitled to recover the filing fee?

### Background and Evidence

The Landlord testified that this tenancy began April 2015. Monthly rent was \$1,350.00 and the Tenant paid a security deposit of \$675.00. The Landlord stated that the current rent is \$1,500.00.

Documentary evidence filed by the Landlord indicates the Notice was personally served on the Tenant on January 4, 2020. The Notice informed the Tenant they had five days in which to pay the outstanding rent of \$400.00 or apply to the Residential Tenancy Branch for Dispute Resolution.

The Landlord testified that the Tenant failed to pay the outstanding rent of \$400.00. The Landlord also testified that the Tenant failed to apply for dispute resolution.

The Landlord stated that the Tenant paid the outstanding rent on February 1, 2020.

In response to the Landlord's claims, the Tenant stated that on January 1, 2020 he told the Landlord that he could not afford to pay the January rent in full and asked for two days to pay the balance.

The Tenant further stated that the Landlord came to the rental property on January 3, 2020 to pick up the rent. The Tenant claimed that he and the Landlord got into an argument and the Landlord did not retrieve the rent. The Tenant claimed that they did not discuss the rent payment at all, and the argument was unrelated.

The Tenant confirmed that he was served the Notice on January 4, 2020. The Tenant further confirmed that he paid the outstanding rent of \$400.00 on February 1, 2020.

The Tenant stated that the Landlord never came back to the rental property to retrieve the rent.

In reply the Landlord stated that he went to the rental unit on January 1, 2020 at which time the Tenant asked for 2 days to pay the rent. When the Landlord attended on January 3, 2020, the Tenant only paid \$1,100.00 leaving \$400.00 owing. The Landlord provided a copy of the receipt for the \$1,100.00 payment, dated January 3, 2020. The Landlord also provided a copy of the receipt for the \$400.00 payment which the Landlord marked as "occupancy use only".

### Analysis

After consideration of the parties' testimony and evidence before me, and on a balance of probabilities, I find as follows.

The Landlord seeks an Order of Possession on the basis of unpaid rent. The Landlord issued the Notice pursuant to Section 46 of the *Act* which provides as follows:

**Landlord's notice: non-payment of rent**

**46** (1)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.

(2)A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.

(3)A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.

(4)Within 5 days after receiving a notice under this section, the tenant may

(a)pay the overdue rent, in which case the notice has no effect, or

(b)dispute the notice by making an application for dispute resolution.

(5)If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

(a)is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b)must vacate the rental unit to which the notice relates by that date.

(6)If

(a)a tenancy agreement requires the tenant to pay utility charges to the landlord, and

(b)the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them,

the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

The evidence before me, confirms the Tenant paid the outstanding rent on February 1, 2020. The Tenant conceded that he was not able to pay the rent on January 1, 2020 when it was due. He claimed he attempted to pay the rent on January 3, 2020, and that he and the Landlord got into an argument and the Landlord left and failed to collect the rent.

The Landlord testified that the Tenant asked for a few days to pay the January rent. The Landlord attended the rental unit on January 3, 2020 at which time the Tenant only paid \$1,100.00 of the \$1,500.00 owed for January 2020. The Landlord also provided a copy of the receipt issued on January 3, 2020 for \$1,100.00.

On balance I prefer the Landlord's testimony of that of the Tenants. The Tenant failed to provide any further information as to the context of the argument which he claims occurred on January 3, 2020. I find it likely the parties had a disagreement about the amount the Tenant paid that day, namely \$1,100.00, rather than some other unrelated matter. Further, the documentary evidence confirms the Tenant paid \$1,100.00 on that date, which is contrary to the Tenant's claim that the Landlord failed to retrieve his payment.

I find that the Tenant was served the Notice on January 4, 2020. The Tenant was informed that he had five days in which to pay the outstanding rent; the relevant contents of the Notice read as follows:

The first page of the Notice informs the Tenant of the five-day deadline as follows:

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**Tenant: YOU MAY BE EVICTED IF YOU DO NOT RESPOND TO THIS NOTICE**

You have five (5) days to pay the rent and utilities (if applicable) to the landlord or file an Application for Dispute Resolution with the Residential Tenancy Branch.

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The second page of the Notice provides the following additional information:

**If within 5 days you do not pay the rent and utilities (if applicable) or make an application for dispute resolution, the landlord can apply for an order of possession through the Direct Request process.**

...

**Disputing the Notice**

- The tenant can make an application for dispute resolution within 5 (five) days after receiving the *10 Day Notice to End Tenancy* (form RTB-30)

...

**Important Facts**

- The tenant is not entitled to withhold rent unless ordered by an arbitrator.

...

**For More Information**

- Refer to *A Guide for Landlords and Tenants in British Columbia* available on the RTB website and offices.
- Visit the Residential Tenancy Branch office at 400 – 5021 Kingsway, Burnaby BC

In all the circumstances, I find that the Tenant was informed of his obligation to pay the rent or file for Dispute Resolution within five days of service. The Tenant knew, based on the contents of the Notice that his tenancy was in jeopardy if he did not pay as required.

As discussed during the hearing the Tenant must pay rent when rent is due; this requirement is set forth in section 26 of the *Act* which reads as follows:

**Rules about payment and non-payment of rent**

**26** (1)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.

As noted during the hearing, there are only four occasions when a Tenant has the right to withhold rent:

1. When the Landlord accepts a security deposit over and above the allowable amount (section 19(2));
2. When the Landlord accepts rent over and above the allowable amount (section 43(5));
3. When an Arbitrator authorizes a Tenant to withhold rent (section 72(2)(a)); and,
4. When the Tenant makes emergency repairs under the circumstances prescribed in section 33 of the *Act*

In the case before me I find the Tenant had no such legal authority to withhold rent. The Tenant claimed the Landlord failed to return to the rental unit to retrieve the balance of the rent. I was not provided any evidence which would support a finding that the Tenant attempted to pay the balance within five days of service of the Notice. Rather, it appears as though the Tenant simply waited until February 1, 2020 to pay the January balance at the same time as his February rent.

I therefore find that the Tenant failed to pay rent as required by the tenancy agreement and section 26 of the *Residential Tenancy Act*.

I also find that the Tenant did not pay the outstanding rent and did not apply to dispute the Notice within the five days required by section 46(4) and is therefore conclusively

presumed pursuant to section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice.

Pursuant to section 55 of the *Act*, I find that the Landlord is entitled to an Order of Possession effective **two (2) days** after service on the Tenant. This Order may be filed in the Supreme Court and enforced as an Order of that Court.

As the Landlord has been substantially successful, I award him recovery of the filing fee. Pursuant to sections 38 and 72 of the *Act*, the Landlord may withhold \$100.00 from the Tenant's security deposit as recovery of this amount.

### Conclusion

The Landlord is granted an Order of Possession and is authorized to retain \$100.00 of the Tenant's security deposit as recovery of the \$100.00 filing fee.

The Landlord's claim for monetary compensation for unpaid rent is dismissed.

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: March 20, 2020

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Residential Tenancy Branch