



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding ACTION PROPERTY MANAGEMENT  
and [tenant name suppressed to protect privacy]

## DECISION

**Dispute Codes**      **CNR / OPR MNRL-S FFL**

### Introduction

This hearing dealt with two applications pursuant to the *Residential Tenancy Act* (the “**Act**”). The landlord’s for:

- authorization to retain all or a portion of the tenant’s security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- an Order of Possession for non-payment of rent pursuant to section 55;
- a monetary order for unpaid rent in the amount of \$1,450 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

And the tenant’s for:

- the cancellation of the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent (the “**Notice**”) pursuant to section 46.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:45 am in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 am. The landlord’s agent (“**SS**”) attended the hearing and was 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’s agent and I were the only ones who had called into this teleconference.

SS testified that she served the tenant with the notice of dispute resolution form and supporting evidence package via registered mail. She provided a Canada Post tracking number confirming this mailing which is reproduced on the cover of this decision. I find

that the tenant has been served with the required documents in accordance with the Act.

### **Preliminary Issue – Amendment of Landlord’s Application**

At the hearing, SS sought to further amend the landlord’s application to include a claim for March 2020 and associated late fee which she testified remains outstanding.

Rule of Procedure 4.2 states:

#### **4.2 Amending an application at the hearing**

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

In this case, the landlord is seeking compensation for unpaid rent that has increased since it first applied for dispute resolution, I find that the increase in the landlord’s monetary claim should have been reasonably anticipated by the tenant. Therefore, pursuant to Rule 4.2, I order that the landlord’s application be amended to include a claim for March 2020 rent and associated late fee rent (\$900).

### **Issues to be Decided**

Is the landlord entitled to:

- 1) an order of possession;
- 2) a monetary order for \$2,350;
- 3) recover its filing fee; and
- 4) apply the security deposit against any monetary order made?

Is the tenant entitled to the cancellation of the Notice?

### **Background and Evidence**

While I have considered the documentary evidence and the testimony of SS, not all details of her submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The parties entered into a written, fixed term tenancy agreement starting November 20, 2019 and ending May 31, 2020. Monthly rent is \$875 and is payable on the first of each month. The tenancy agreement contains an addendum which permits the landlord to charge a \$25 late fee for each late rent payment. The tenant paid the landlord a security deposit of \$437.50, which the landlord still holds in trust

The landlord testified that the tenant was served with the Notice on January 22, 2020. It sets out an effective date of February 5, 2020. The Notice stated that \$800 in rent was owed as of January 1, 2020. When the tenant failed to vacate the rental unit on February 5, 2020, the landlord served a second notice to end tenancy for non-payment of rent, showing the arrears to be \$1,425.

SS testified that the tenant's rental arrears are currently \$2,350, representing the following credits and debits to the tenant's account:

December Arrears	31-Dec-19	\$125
January Rent	01-Jan-20	\$875
Late Fee	02-Jan-20	\$25
Rent Payment	08-Jan-20	<del>-\$450</del>
February Rent	01-Feb-20	\$875
Late Fee	02-Feb-20	\$25
March Rent	01-Mar-20	\$875
Late Fee	02-Mar-20	\$25
<b>Total</b>		<b>\$2,350.00</b>

### **Analysis**

In accordance with sections 88 and 90 of the Act, I find that the tenants were served with the Notice on January 22, 2020.

Rule of Procedure 6.6 states:

#### **6.6 The standard of proof and onus of proof**

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. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

As such, the landlord must satisfy me that the tenant has failed to pay the rental arrears. Based on SS's testimony, I find that the tenant has not paid rent the full rent for January, February or March 2020 and is in arrears of \$2,350. Section 26 of the Act requires that a tenant pay rent when it is due:

**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.

There is no exception to this obligation based on a tenant's inability to pay rent.

I find that the Notice was validly issued, and that the tenant owes the landlord \$2,350 in rent and late fees for January, February, and March 2020.

Therefore, I find that the landlord is entitled to an order of possession and a monetary order of \$2,350 for unpaid rent and late fees.

Pursuant to section 72(1) of the Act, as the landlord has been successful in its application, it may recover the filing fee from the tenant.

Pursuant to section 72(2) of the Act, the landlord may deduct the security deposit from the monetary order made in this decision.

## **Conclusion**

Pursuant to sections 67 and 72 of the Act, the tenant must pay the landlord \$2,012.50, representing the following:

Rental Arrears	\$2,350.00
Filing Fee	\$100.00
Security Deposit Credit	-\$437.50
<b>Total</b>	<b>\$2,012.50</b>

Pursuant to section 55 of the Act, I order that the tenant deliver vacant possession of the rental unit to the landlord within two days of being served with the attached order of possession by the landlord.

*Residential Tenancy (COVID-19) Order, MO M089 (Emergency Program Act)* made March 30, 2020 (the “**Emergency Order**”) permits an arbitrator to issue an order of possession if the notice to end tenancy the order of possession is based upon was issued prior to March 30, 2020 (as per section 3(2) of the Emergency Order).

However, per section 4(3) of the Emergency Order, a landlord may not file an order of possession at the Supreme Court of BC unless it was granted pursuant to sections 56 (early end to tenancy) or 56.1 of the Act (tenancy frustrated). The order of possession granted above is not issued pursuant to either section 56 or 56.1 of the Act.

This suspension of enforcement of orders of possession does not relieve the tenant from paying monthly rent. Rent continues to be due and payable in accordance with the tenancy agreement.

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: April 2, 2020

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Residential Tenancy Branch