



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Courtenay Four Rental Corp-Argo Court Apts  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes:** OPR OPC FFL MNR

### **Introduction**

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the *Act*") for an Order of Possession for:

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

While the landlord's agent, CM ("landlord"), attended the hearing by way of conference call, the tenants did not. The landlord was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord testified that the tenant was served with the landlord's application and evidence package on February 5, 2020. The landlord provided a copy of the receipt and tracking information in their evidentiary materials. In accordance with sections 88, 89, and 90 of the *Act*, I find the tenant deemed served with this package on February 10, 2020, 5 days after mailing.

The landlord filed an amendment on February 20, 2020, and served the tenant by way of registered mail on February 20, 2020. The landlord filed a second amendment on March 17, 2020, and served this amendment by way of registered mail on March 17, 2020. In accordance with sections 88, 89, and 90 of the *Act*, I find the tenant deemed served with these amendments 5 days after mailing.

The landlord testified that the tenant was served with a 1 Month Notice to End Tenancy for Cause on November 8, 2019 by way of posting the 1 Month Notice on the tenant's door. In accordance with section 88 and 90 of the *Act*, I find the tenant deemed served with the 1 Month Notice on November 11, 2019, 3 days after posting.

The landlord testified that the tenant was served a 10 Day Notice for Unpaid Rent on February 6, 2020 by way of posting the 10 Day Notice on the tenant's door. In accordance with sections 88 and 90 of the *Act*, I find the tenant deemed served with the 10 Day Notice on February 9, 2020, 3 days after posting.

**Issue(s) to be Decided**

Is the landlord entitled to an Order of Possession for unpaid rent?

Is the landlord entitled to an Order of Possession for cause?

Is the landlord entitled to monetary compensation for unpaid rent?

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

**Background and Evidence**

The landlords testified regarding the following facts. This month-to-month tenancy began on October 1, 2016, with monthly rent currently set at \$765.00, payable on the first of every month. The landlord collected a security deposit in the amount of \$350.00, which the landlord still holds.

The tenant was served with a 1 Month Notice for Cause on November 8, 2019 for repeated late rent payments. The landlord provided copies of previous 10 Day Notices for Unpaid rent that was served to the tenant.

The landlord testified that the tenant has failed to pay any rent for February 2020 through to April 2020. The tenant was served another 10 Day Notice to End Tenancy for Unpaid Rent on February 6, 2020 for failing to pay the February 2020 Rent.

The landlord is seeking an Order of Possession, as well as a monetary order for the unpaid rent for the months of February 2020 through to April 2020 in the amount of \$2,295.00 as well as recovery of the filing fee for this application.

**Analysis**

**Section 26** of the *Act*, in part, states 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.*

**Section 52** of the *Act* provides the following requirements requiring the form and content of notices to end tenancy:

**52** *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, and*

*(e) when given by a landlord, be in the approved form...*

I find that the tenant failed to pay the outstanding rent in full, within five days of being deemed to have received the 10 Day Notice. The tenant did not make an application pursuant to section 46(4) of the *Act* within five days of being deemed to have received the 10 Day Notice. In accordance with section 46(5) of the *Act*, the failure of the tenant to take either of the above actions within five days led to the end of this tenancy on February 19, 2020, the corrected, effective date of the 10 Day Notice. In this case, this required the tenant and anyone on the premises to vacate the premises by February 19, 2020. I find that the landlord's 10 Day Notice complies with section 52 of the *Act*. As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession, pursuant to section 55 of the *Act*.

The landlord provided undisputed evidence that the tenant failed to pay the outstanding rent in the amount of \$2,295.00 for the months of February 2020 through to April 2020. Therefore, I find that the landlord is entitled to \$2,295.00 in outstanding rent for this tenancy.

The landlord continues to hold the tenant's security deposit of \$350.00. 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.

As the landlord was successful in their application, I find that they are entitled to recover the filing fee for this application.

**Conclusion**

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 \$2,045.00 Monetary Order in favour of the landlord under the following terms, which allows the landlord to recover unpaid rent, plus the filing fee, and also allows the landlord to retain the tenant's security deposit:

<b>Item</b>	<b>Amount</b>
Unpaid Rent for February 2020	\$765.00
Unpaid Rent for March 2020	765.00
Unpaid Rent for April 2020	765.00
Less Security Deposit	-350.00
Recovery of Filing Fee for this Application	100.00
<b>Total Monetary Order</b>	<b>\$2,045.00</b>

The tenant(s) must be served with this Order as soon as possible. Should the tenant(s) 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: April 14, 2020

---

Residential Tenancy Branch