



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

OPR, MNRL-S, FFL

### Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for an Order of Possession for Unpaid Rent or Utilities, a monetary Order for unpaid rent or utilities, to retain all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

The Agent for the Landlord stated that on March 06, 2020 the Dispute Resolution Package and evidence the Landlord submitted to the Residential Tenancy Branch on February 25, 2020 were sent to the Tenant, via registered mail, at the rental unit. The Landlord submitted Canada Post documentation that corroborates this statement. In the absence of evidence to the contrary I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*, however the Tenant did not appear at the hearing.

As the aforementioned documents were properly served to the Tenant, the evidence was accepted for these proceedings and the hearing proceeded in the absence of the Tenant.

The Agent for the Landlord affirmed that she would speak the truth, the whole truth, and nothing but the truth at these proceedings.

### Preliminary Matter

The Agent for the Landlord applied to amend the Application for Dispute Resolution to include all unpaid rent currently due. I find that it was reasonable for the Tenant to conclude that the Landlord is seeking to recover all of the rent that is currently due, including unpaid rent that has accrued since the Application for Dispute Resolution was

filed. I therefore grant the application to amend the monetary claim to include all rent that is currently due.

### Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession, to a monetary Order for unpaid rent or unpaid utilities, and to retain all of part of the security deposit?

### Background and Evidence

The Agent for the Landlord stated that:

- this tenancy began on March 01, 2011;
- for the period between December 01, 2019 and February 28, 2020, rent was \$1,337.62 per month;
- the rent was increased to \$1,372.39, effective March 01, 2020;
- rent was due by the first day of each month;
- the Tenant paid a security deposit of \$560.00;
- the Tenant did not pay any rent for December of 2019, February of 2020, March, of 2020, April of 2020, or May of 2020; and
- a Ten Day Notice to End Tenancy for Unpaid Rent, which has an effective date of February 22, 2020 was mailed to the Tenant on February 07, 2020.

### Analysis

On the basis of the undisputed evidence, I find that the Tenant entered into a tenancy agreement with the Landlord that required the Tenant to pay monthly rent of \$1,337.52 for the period between December 01, 2019 and February 28, 2020, and that no rent was paid for December of 2019 or February of 2020. As the Tenant is required to pay rent when it is due, pursuant to section 26(1) of the *Residential Tenancy Act (Act)*, I find that the Tenant must pay \$2,675.24 in outstanding rent for these two months.

Section 46(1) of the *Act* entitles landlords to end a tenancy within ten days if rent is not paid when it is due by providing proper written notice. On the basis of the undisputed evidence I find that the Ten Day Notice to End Tenancy, served pursuant to section 46 of the *Act*, was mailed to the Tenant on February 07, 2020.

Section 90 of the *Act* stipulates that a document that is mailed is deemed to be received on the fifth day after it is mailed. I therefore find that the Tenant received the Notice to End Tenancy on February 12, 2020.

Section 46 of the *Act* stipulates that a tenant has five days from the date of receiving the Notice to End Tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. I have no evidence that the Tenant exercised either of these rights and, pursuant to section 46(5) of the *Act*, I find that the Tenant accepted that the tenancy ended on the effective date of the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, which was February 22, 2020. On this basis I grant the landlord an Order of Possession.

As the Tenant did not vacate the rental unit on February 22, 2020, I find that the Tenant is obligated to pay rent, on a per diem basis, for the days the Tenant remained in possession of the rental unit. As the Tenant has already been ordered to pay rent for the period between February 22, 2020 and February 29, 2020, I find that the Landlord has been fully compensated for that period. I find that the Tenant must pay rent for March and April of 2020, in the amount of \$2,744.78, as he remained in possession of the rental unit for those months. I find that the Tenant must pay rent for one day in May of 2020, at a rate of \$44.27 per day, as he remained in possession of the rental unit on May 01, 2020.

I decline to award compensation to the Tenant for any other days in May of 2020, as it is entirely possible the Tenant may vacate the rental unit by May 02, 2020. The Tenant is obligated to pay rent, on a daily basis for any other days in May he remains in possession of the unit. In the event the Tenant does not pay for rent accruing after May 01, 2020, the Landlord is at liberty to file another Application for Dispute Resolution

I find that the Landlord's application has merit and that the Landlord is entitled to recover the cost of filing this Application for Dispute Resolution.

### Conclusion

I grant the Landlord an Order of Possession that is effective **at 1:00 p.m. on May 31, 2020**. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

It is my understanding that due to the current health crisis in British Columbia, the Supreme Court of British Columbia is not enforcing most Orders of Possession. This does not affect the validity of this Order of Possession. In the event the Tenant is able to safely move out of the rental unit during this health crisis by the effective date of this Order of Possession, the Tenant should do so. The effective date of this Order is

intended to provide the Tenant with a reasonable opportunity to safely secure alternate accommodations.

In the event the Tenant does not vacate the rental unit by the effective date of the Order of Possession, the Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court whenever that Court deems it appropriate.

The Landlord has established a monetary claim, in the amount of \$5,564.29, which includes \$5,464.29 in unpaid rent and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to keep the Tenant's security deposit of \$560.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$5,004.29. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia 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: May 01, 2020

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Residential Tenancy Branch