



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **OPR, MNRL-S, FFL, MNDCL**

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act"):

- 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 from the tenant pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 10 minutes. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord testified that a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice"), dated March 9, 2020 was served on the tenant personally on that date. The landlord provided a Proof of Service form signed by the tenant acknowledging service as evidence. Based on the undisputed evidence I find that the tenant was served with the landlord's 10 Day Notice on March 9, 2020

The landlord testified that the landlord's application for dispute resolution dated May 2, 2020 and evidence were sent to the tenant by registered mail sent on May 5, 2020. The landlord provided a valid Canada Post tracking receipt as evidence of service. Based on the evidence I find that the tenant is deemed served with the landlord's materials on May 10, 2020, five days after mailing, in accordance with sections 88, 89 and 90 of the Act.

At the outset of the hearing, the landlord requested to amend the monetary amount of their claim indicating that additional rent has come due since the application was filed. As additional rent becoming owing is reasonably foreseeable, I allow the landlord to amend their application pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure, to \$8,600.00.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a monetary award as claimed?

Is the landlord entitled to recover the filing fee from the tenant?

Background and Evidence

The landlord provided undisputed testimony regarding the following facts. The monthly rent for this periodic tenancy is \$2,800.00 payable on the first of each month. A security deposit of \$1,400.00 and pet damage deposit of \$1,400.00 were collected at the start of the tenancy and is still held by the landlord.

The landlord testified that at the time the 10 Day Notice was issued the tenancy was in arrears by \$2,800.00, the amount initially sought in the 10 Day Notice. The landlord testified that while the tenant made some cash payments, they were not made within 5 days of the 10 Day Notice being served nor has the arrears been paid in full. The landlord testified that they informed the tenant that the partial payments did not reinstate the tenancy and any payments were accepted for use and occupancy only.

The landlord gave evidence that the tenant failed to pay the full rent for the subsequent months of April, May and June, 2020 and that the total arrear as of the date of the hearing, June 8, 2020 is \$8,600.00.

Analysis

The landlord provided undisputed evidence at this hearing, as the tenant did not attend. I find that there was an enforceable tenancy agreement between the parties wherein the tenants were obligated to pay the monthly rent in the amount of \$2,800.00. I accept that there was an arrear of \$2,800.00 as at March 9, 2020, the date of the 10 Day Notice. I accept the landlord's evidence that the tenant failed to pay the full rent due within the 5 days of service granted under section 46(4) of the *Act* nor did the tenant file an application to dispute the 10 Day Notice within that 5 day period. Accordingly, I find that the tenants are conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 10 Day Notice, March 19, 2020.

The 10 Day Notice is dated March 9, 2020 and was issued prior to the *Ministerial Order M089* issued March 30, 2020 pursuant to the State of Emergency declared on March

18, 2020. Therefore, in accordance with section 3(2) of the Ministerial order and pursuant to section 55 of the *Act*, I find that the landlord is entitled to an Order of Possession.

I accept the landlord's undisputed evidence that the total amount of arrears for this tenancy is \$8,600.00. I issue a monetary award in the landlord's favour for unpaid rent of \$8,600.00 as at June 8, 2020, the date of the hearing, pursuant to section 67 of the *Act*.

As the landlord's application was successful, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's security and pet damage deposit of \$2,800.00 in partial satisfaction of the monetary award issued in the landlord's favour.

#### Conclusion

I grant an Order of Possession to the landlord effective **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 monetary order in the landlord's favour in the amount of \$5,900.00, allowing the landlord to recover the unpaid rent and filing fee and retain the security and pet damage deposit for this tenancy. The tenant must be served with this Order as soon as possible. Should the tenant 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: June 8, 2020

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Residential Tenancy Branch