



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, OLC  
                             OPR, MNRL-S, FFL

### Introduction

This hearing dealt with the adjourned cross Applications for Dispute Resolution filed by the parties under the Residential Tenancy Act (the “Act”). The matter was set for a conference call.

The Tenant’s Application for Dispute Resolution was made on February 20, 2020. The Tenant applied to cancel a 10-Day Notice to End Tenancy for Unpaid Rent (the Notice) dated February 17, 2020, and to request an order for the Landlord to comply with the Act.

The Landlord’s Application for Dispute Resolution was made on March 11, 2020. The Landlord applied to enforce a 10-Day Notice to End Tenancy for Unpaid Rent dated February 17, 2020, for a monetary order for unpaid rent, and to recover their filing fee.

The Landlord and the Tenant attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenant were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

- Should the Notice to End Tenancy dated February 17, 2020 be cancelled?
- If not, is the Landlord entitled to an order of possession pursuant to section 55 of the Act?
- Is the Landlord entitled to a monetary order for unpaid rent and utilities?
- Is the Landlord entitled to the return of his filing fee?
- Should the Landlord be ordered to comply with the Act and/or tenancy agreement?

### Background and Evidence

The tenancy agreement shows that this tenancy began on August 10, 2018, and that rent was set at \$1,400.00, and is to be paid by the first day of each month. The Tenant testified that they paid the Landlord a \$700.00 security deposit for this tenancy. The Landlord was unable to confirm if the security deposit had been paid. The Landlord submitted a copy of the tenancy agreement into documentary evidence. The Tenant submitted a copy of their e-transfer receipt for payment of the security deposit payment into documentary evidence.

The Landlord testified that they served the 10-Day Notice to the Tenant on February 17, 2020, by personally serving the Notice to the Tenant. The 10-Day Notice listed an effective date of February 27, 2020, and an outstanding rent amount of \$1,400.00 for the February 2020, rent.

The Landlord testified that in addition to not paying the February 2020, the Tenant had also not paid the rent for March, April, May and June 2020.

The Tenant testified that he had not paid the rent for February, March, April, May and June 2020. The Tenant testified that they had withheld the rent due to the Landlord's refusal to make required repairs to the rental unit. The Tenant testified that they felt it was unfair to have to pay rent when repairs were required to the rental property.

The Tenant testified that they had never applied for dispute resolution with the Residential Tenancy Branch for an order for the Landlord to make repairs and that they had not made any repairs themselves to the rental unit.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I have reviewed the tenancy agreement and e-transfer receipts entered into documentary evidence for this proceedings, and I find that these parties entered into a one-year fixed term tenancy, for an agreed upon rent of \$1,400.00 per month and that the Tenant had paid the Landlord a \$700.00 security deposit.

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for Non-payment of Rent a tenant must, within five days, either pay the amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does not do either of these things, the tenant is conclusively presumed to have accepted the Notice under section 46(5).

#### ***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.*

I find that the Tenant received a 10-Day notice for unpaid rent from the Landlord on February 17, 2020, and that the Tenant applied to dispute the Notice on February 20, 2020, within the legislated timeline.

I accept the agreed-upon testimony of both parties that the Tenant has not paid the outstanding rent, as stated on the 10-Day Notice within the required five days, nor have they paid the rent for March, April, May and June 2020.

I have reviewed the Tenant's testimony and documentary evidence, and I find that the Tenant did not have permission from the Landlord to withhold the rent, nor had they paid for emergency repairs to the rental unit, or did they have an order from this office allowing them to withhold any portion of the rent. Therefore, I find that the Tenant is in breach of section 26 of the Act by not paying the rent in accordance with the tenancy agreement and I dismiss the Tenant's application to cancel the Notice.

Section 55 of the *Act* states that a landlord may request an order of possession if a notice to end the tenancy has been given by the landlord and the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired.

***Order of possession for the landlord***

***55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if***

*(a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and  
(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.*

I have reviewed the Notice to End Tenancy, and I find the Notice complies with section 52 of the Act. Pursuant to section 55 of the Act, as I have already dismissed the Tenant's application to cancel the Notice, I must grant the Landlord an order of possession to the rental unit.

Therefore, I grant the Landlord an **Order of Possession** effective **14 days** after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that the costs of such enforcement are recoverable from the tenant

I acknowledge that the Provincial Government declared a state of emergency on March 18, 2020. I note that 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 and can only be enforced through the Supreme Court of BC once the Emergency Order is lifted. The Landlord acknowledged understanding of these conditions during this hearing.

Additionally, I find that the Landlord has established an entitlement to a monetary award for the outstanding rent for February, March, April, May and June 2020, in the amount of \$7,000.00. I authorized the Landlord to retain the Tenant's \$700.00 security deposit in partial satisfaction of this award.

As for the Tenant's claim for an order for the Landlord to comply with the Act, I have reviewed the testimony and documentary evidence provided by both parties, and I find that there is no evidence before me to show that the Landlord has breached the *Act*. Therefore, I dismiss the Tenant's claim for an order for the Landlord to comply with the Act.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has been successful in part of their application, I find the Landlord is entitled to recover the \$100.00 filing fee for this application.

I grant the Landlord a Monetary Order in the amount of \$6,400.00; consisting of \$7,000.00 in unpaid rent, and \$100.00 for the recovery of the filing fee, less the \$700.00 security deposit the Landlord is holding for this tenancy.

Conclusion

I grant an **Order of Possession** to the Landlord effective not later than **14 days** after service upon the Tenant. The Tenant must be served with this Order. Should the Tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I grant the Landlord a **Monetary Order** in the amount of **\$6,400.00**. The Landlord is provided with this Order in the above terms, and 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 15, 2020

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Residential Tenancy Branch