



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPU, MNRL, MNDCL, FFL

### Introduction

On June 13, 2020, the Landlord applied for a Dispute Resolution proceeding seeking an Order of Possession for unpaid utilities based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”) pursuant to Section 46 of the *Residential Tenancy Act* (the “Act”), seeking a Monetary Order for the unpaid rent or utilities pursuant to Section 67 of the *Act*, seeking a Monetary Order for damage pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On June 15, 2020, this Application was set down for a participatory hearing to be heard on July 9, 2020 at 11:00 AM.

The Landlord attended the hearing; however, the Tenant did not attend the 33-minute hearing. All in attendance provided a solemn affirmation.

The Landlord advised that he served the Tenant with the Notice of Hearing and evidence package by registered mail on June 17, 2020 (the registered mail tracking number is noted on the first page of this Decision). The tracking history indicated that this package was delivered on June 22, 2020. Based on this undisputed evidence, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenant was served the Notice of Hearing and evidence package.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession based on the Notice?
- Is the Landlord entitled to a Monetary Order for unpaid rent or utilities?

- Is the Landlord entitled to a Monetary Order for damage?
- Is the Landlord entitled to recover the filing fee?

### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Landlord advised that the tenancy started “probably around” August 2019; however, he was not sure, and a written tenancy agreement was never signed. Rent was owed in the amount of \$1,800.00 per month and was due on the first day of each month. A security deposit of \$900.00 was also paid.

He advised that he served the Notice to the Tenant on December 19, 2019 by posting it to the Tenant’s door. With respect to the utilities owing on the Notice, he stated that he never provided the Tenant with a written demand for the utilities.

With respect to the unpaid rent on the Notice, the Landlord indicated that the amount owing of \$2,800.00 is calculated as \$900.00 for unpaid rent in November 2019, \$1,800.00 for December 2019, and \$100.00 that is “maybe from a previous month” but he is not sure. He stated that the Tenant did not pay November 2019 rent but the Tenant asked if she could use the security deposit to apply towards this month’s rent. While the Landlord did not give written consent to apply this to the rent, he stated that he accepted this offer from the Tenant and used the deposit for part of November 2019 rent. The effective end date of the tenancy on the Notice was noted as January 2, 2020.

While he indicated on his Application that he was seeking compensation in the amount of \$9,000.00 for unpaid rent, he could not explain how he arrived at that amount. However, he noted on his Application that he is seeking “rent for 8 months I am only requesting 5.”

The Landlord also advised that he was seeking compensation in the amount of \$500.00 for a broken window. This window was not replaced yet but there is a board covering the area where the window was. He did not provide an estimate for the cost of this repair.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 21 states that “Unless the landlord gives written consent, a tenant must not apply a security deposit or a pet damage deposit as rent.”

In considering this matter, I have reviewed the Landlord’s Notice to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. In reviewing this Notice, I am satisfied that the Notice meets all of the requirements of Section 52. Therefore, I find that it is a valid Notice.

Section 26 of the *Act* states that rent must be paid by the Tenant when due according to the tenancy agreement, whether or not the Landlord complies with the tenancy agreement or the *Act*, unless the Tenant has a right to deduct all or a portion of the rent.

Should the Tenant not pay the rent when it is due, Section 46 of the *Act* allows the Landlord to serve a 10 Day Notice to End Tenancy for Unpaid Rent. Once this Notice is received, the Tenant would have five days to pay the rent in full or to dispute the Notice. If the Tenant does not do either, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenant must vacate the rental unit.

The undisputed evidence before me is that the Tenant was deemed to have received the Notice on December 22, 2019 after it was posted to her door on December 19, 2019. According to Section 46(4) of the *Act*, the Tenant has 5 days to pay the overdue rent or to dispute this Notice. Section 46(5) of the *Act* states that *“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 is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date.”*

As the fifth day after being deemed to have received the Notice fell on December 22, 2019, the Tenant must have paid the rent in full or disputed the Notice by December 27, 2019 at the latest. The undisputed evidence is that the Tenant did not pay the rent or make an Application, and there is no evidence before me that permitted the Tenant to withhold the rent.

While the Landlord requested an Order of Possession for unpaid utilities in his Application, as it also states that he is seeking an Order of Possession for unpaid rent, I will also consider this request as well. As the Landlord’s Notice is valid, as I am satisfied that the Notice was served in accordance with Section 88 of the *Act*, and as the Tenant has not complied with the *Act*, I uphold the Notice and find that the Landlord is entitled to an Order of Possession for unpaid rent pursuant to Sections 46 and 55 of the *Act*.

I will now turn my mind to the issue of compensation based on the Notice. As stated above, Section 21 of the *Act* allows the Landlord to apply the security deposit, at the Tenant’s request, towards the rent. While this was never approved by the Landlord in writing, I accept his undisputed testimony that he approved to use the security deposit

towards November 2019 rent. In addition, I accept his undisputed testimony that neither the balance of November 2019 rent, nor December 2019 rent was paid. Therefore, I grant the Landlord a monetary award in the amount of **\$2,700.00**. However, as the Landlord was not clear about the \$100.00 that may or may not have been owed for rent arrears prior to November 2019, I dismiss this claim with leave to reapply.

With respect to the Landlord's claims for rental loss from January 2020 until the date of the hearing, I accept his undisputed testimony that no rent has been paid since November 2019. As such, I grant the Landlord a further monetary award in the amount of **\$12,600.00** for the months from January 2020, including July 2020 rent.

Regarding the Landlord's request for compensation for utilities, as the Landlord has not made any submissions on this issue and has not submitted any evidence for consideration, the request for compensation for utilities is dismissed with leave to reapply.

With respect to the Landlord's request for compensation for damage, as the Landlord has not submitted any evidence for consideration, the request for compensation for damages is dismissed with leave to reapply.

As the Landlord was successful in this Application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this Application.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlord a Monetary Order as follows:

#### **Calculation of Monetary Award Payable by the Landlord to the Tenants**

Rent for November 2019	\$900.00
Rent for December 2019	\$1,800.00
Rent for January 2020	\$1,800.00
Rent for February 2020	\$1,800.00
Rent for March 2020	\$1,800.00
Rent for April 2020	\$1,800.00
Rent for May 2020	\$1,800.00
Rent for June 2020	\$1,800.00
Rent for July 2020	\$1,800.00
Recovery of filing fee	\$100.00
<b>TOTAL MONETARY AWARD</b>	<b>\$15,400.00</b>

#### Conclusion

The Landlord is provided with a formal copy of an Order of Possession effective **two days after service of this Order** on the Tenant. Should the Tenant or any occupant 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.

The Landlord is also provided with a Monetary Order in the amount of **\$15,400.00** 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: July 9, 2020

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Residential Tenancy Branch