



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, OPC, MNRL, MNDCL, FFL

### Introduction

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

- an order of possession for unpaid rent and for cause, pursuant to section 55;
- a monetary order for unpaid rent and for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 13 minutes. The landlord's agent 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's agent confirmed that he had permission to speak on behalf of the landlord named in this application.

The hearing began at 9:30 a.m. with only me present. The landlord's agent called in at 9:32 a.m., stating that he had difficulty with the access code. The landlord's agent called the landlord at 9:34 a.m. but was unable to reach him. The hearing ended at 9:43 a.m.

The landlord's agent testified that he served the tenant with the landlord's application for dispute resolution hearing package on June 29, 2020, by way of posting to the tenant's rental unit door. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's application on July 2, 2020, three days after its posting.

I notified the landlord's agent that I could not hear the landlord's monetary claims because the landlord's application was posted to the door, which is only permitted for orders of possession, as per section 89(2) of the *Act*, not for monetary claims, as per section 89(1) of the *Act*. The landlord's agent was aware and confirmed his understanding of same, indicating he wanted to proceed with the hearing for the orders of possession claims. Accordingly, these portions of the landlord's application are dismissed with leave to reapply.

The landlord's agent stated that the tenant was served with the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated March 11, 2020 ("10 Day Notice"), on the same date by way of posting to the rental unit door. The landlord provided a signed, witnessed proof of service with this application. The landlord's agent said that he witnessed the posting by the landlord and his wife. The landlord's agent confirmed that the effective move-out date on the notice is March 25, 2020. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's 10 Day Notice on March 14, 2020, three days after its posting.

The landlord's agent was unsure of service information regarding the landlord's 1 Month Notice to End Tenancy for Cause, dated March 16, 2020. Accordingly, the landlord's application for an order of possession for cause is dismissed with leave to reapply.

### Issues to be Decided

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

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

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the landlord's agent, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord's agent testified regarding the following facts. This tenancy began on October 1, 2017. Monthly rent in the amount of \$1,575.00 is payable on the first day of each month. No security deposit was paid by the tenant. He does not know whether a written tenancy agreement was signed by both parties. The tenant continues to reside in the rental unit.

The landlord seeks an order of possession based on the 10 Day Notice. The landlord issued the 10 Day Notice for unpaid rent of \$117.00 due on March 1, 2020. The landlord's agent testified that the tenant failed to pay \$117.00 for March 2020 rent and has not paid rent from April to July 2020, inclusive.

### Analysis

The landlord provided undisputed evidence at this hearing, as the tenant did not attend. The tenant failed to pay the full rent due on March 1, 2020, within five days of being deemed to have received the 10 Day Notice. The tenant has not made 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 March 25, 2020, the effective date on the 10 Day Notice. In this case, this required the tenant and anyone on the premises to vacate the premises by March 25, 2020. As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession against the tenant, pursuant to section 55 of the *Act*. I find that the landlord's 10 Day Notice complies with section 52 of the *Act*.

As the landlord was only partially successful in this application, I find that he is not entitled to recover the \$100.00 filing fee from the tenant.

### Conclusion

I grant an Order of Possession to the landlord effective two (2) days after service on the tenant. The tenant must be served with this Order as soon as possible. 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.

The landlord's application for an order of possession for cause and a monetary order for unpaid rent and for damage or loss under the *Act*, *Regulation* or tenancy agreement, is dismissed with leave to reapply.

The landlord's application to recover the \$100.00 filing fee is dismissed without leave to reapply.

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 23, 2020

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Residential Tenancy Branch