



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR, FFL, MNRL, MNDL, MNDCL, CNR, CNR-MT, CNC-MT

### Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlords requested:

- an Order of Possession pursuant to section 55;
- a monetary order for unpaid rent and damages pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant requested:

- cancellation of the landlords’ 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- cancellation of the landlord’s 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- more time to make an application to cancel the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 66; and
- more time to make an application to cancel the landlord’s 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 66.

While the landlord attended the hearing by way of conference call, the tenant did not. I waited until 11:15 a.m. to enable the tenant to participate in this scheduled hearing for 11:00 a.m. The landlords were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant initiated the dispute resolution process by filing an application first and was given this date. I am satisfied that the tenant was fully aware of this hearing. As the tenant chose not to dial into the

conference, I hereby dismiss both of the tenant's applications in their entirety without leave to reapply.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a monetary award for unpaid rent or money owed under the tenancy agreement, regulation, or *Act*?

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

Background and Evidence

The landlord gave the following undisputed testimony. The landlord testified that the tenancy began on January 1, 2020. The monthly rent of \$2,250.00 was due on the first of each month. The tenant paid a \$1,000.00 security deposit which the landlord still holds. The landlord testified that the tenant fell behind in rent almost immediately despite making partial payments the amount of unpaid rent as of today is \$14,200.00. The landlord testified that on September 24, 2020 he served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities personally to the tenant.

The landlord testified that he sat down with the tenant and attempted to work out a repayment plan that would assist the tenant. The landlord testified that the tenant promised to pay but didn't. The landlord testified that the tenant has changed the locks and not given him the keys. The landlord testified that the unit looks abandoned but has been advised that the tenant has come back twice through a window. The landlord was advised by police to stay away until he has an order of possession from the Branch giving him legal right to the unit, out of an abundance of caution. The landlord testified that he believes the unit to have over \$40,000.00 damage to it as a result of the tenant's actions.

Analysis

Section 55(1) of the *Act* reads as follows:

**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.

**In the absence of any evidence or submissions from the tenant, I order the tenant's applications dismissed without liberty to reapply.** I find that the 10 Day Notice complies with section 52 of the *Act*.

Based on my decision to dismiss the tenant's application for dispute resolution and pursuant to section 55(1) of the *Act*, I find that this tenancy ended on the corrected effective date of the 10 Day Notice, October 7, 2020. I find that the landlord is entitled to a 2-day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlords may enforce this Order in the Supreme Court of British Columbia.

The landlords provided undisputed evidence that the tenant failed to pay the rent in full for the period of January 2020 to November 2020 with an unpaid balance of \$14,200.00. Therefore, I find that the landlords are entitled to \$14,200.00 in arrears for the above period.

The landlord continues to hold the tenant's security deposit in the amount of \$1,000.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlords to retain the tenant's security deposit in partial satisfaction of the monetary claim. I find that the landlords are entitled to recovery the \$100.00 filing fee from the tenant.

Both parties referred to numerous notices to end tenancy in their applications, however, as I have found that the above notice is enforceable, I need not consider any other notices. Furthermore, the landlord referred to damages, however, he is premature in that portion of his application as he has not yet obtained possession of the unit and conducted the repairs, accordingly; I dismiss the landlords monetary claim for damages with leave to reapply.

Conclusion

As the tenant did not attend this hearing, both of their entire applications are dismissed without leave to reapply.

The landlord has established a claim for \$14,300.00. I order that the landlord retain the \$1000.00 deposit in partial satisfaction of the claim, and I grant the landlord an order under section 67 for the balance due of \$13,300.00. This order may be filed in the 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 *Residential Tenancy Act*.

Dated: November 16, 2020

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Residential Tenancy Branch