



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNRL, OPR-PP, FFL

### Introduction

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

- an Order of Possession for unpaid rent, pursuant to sections 46 and 55;
- a Monetary Order for unpaid rent, pursuant to sections 26 and 67; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:40 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. The landlord's agent (the "agent") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the agent and I were the only ones who had called into this teleconference.

The agent testified that the tenant was personally served with the landlord's application for dispute resolution on November 1, 2020. The agent entered into evidence a receipt confirmation signed by the tenant. I find that the tenant was served in accordance with section 89 of the *Act*.

### Preliminary Issue- Unpaid Rent

Section 64(3)(c) of the *Act* states that subject to the rules of procedure established under section 9 (3) [director's powers and duties], the director may amend an application for dispute resolution or permit an application for dispute resolution to be amended.

Section 4.2 of the Residential Tenancy Branch Rules of Procedure (the “Rules”) states that in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

The landlord’s original application claimed unpaid rent in the amount of \$2,000.00. Since filing for dispute resolution, the agent testified that the amount of rent owed by the tenant has increased to \$6,000.00.

I find that in this case the fact that the landlord is seeking compensation for all outstanding rent, not just the amount outstanding on the date the landlord filed the application, should have been reasonably anticipated by the tenant. Therefore, pursuant to section 4.2 of the Rules and section 64 of the *Act*, I amend the landlord’s application to include a monetary claim for all outstanding rent in the amount of \$6,000.00.

#### Issues to be Decided

1. Is the landlord entitled to an Order of Possession for unpaid rent, pursuant to sections 46 and 55 of the *Act*?
2. Is the landlord entitled to a Monetary Order for unpaid rent, pursuant to sections 26 and 67 of the *Act*?
3. Is the landlord entitled to recover the filing fee from the tenant, pursuant to section 72 of the *Act*?

#### Background and Evidence

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

The agent provided the following undisputed testimony. This tenancy began on May 1, 2019 and is currently ongoing. Monthly rent in the amount of \$1,000.00 is payable on the first day of each month. A security deposit of \$500.00 was paid by the tenant to the landlord.

The agent testified that the tenant has not paid any rent from August 2020 to January 2021.

The agent testified that the tenant was served with a 10 Day Notice for unpaid rent in September 2020 (the "First Notice"). The agent entered into evidence a witnessed proof of service document stating that the tenant was served in person on September 3, 2020. The First 10 Notice was entered into evidence and states that the tenant has failed to pay rent in the amount of \$1,000.00 that was due on September 1, 2020 and that the tenant owes further rent incurred during COVID. The tenant did not dispute the First Notice.

The agent entered into evidence a text message from the tenant confirming that the tenant did not pay September 2020's rent.

The agent testified that the tenant was served with a second 10 Day Notice for unpaid rent on October 2, 2020 (the "Second Notice"). The agent entered into evidence a witnessed proof of service document stating that the tenant was served in person on October 2, 2020. The Second 10 Notice was entered into evidence and states that the tenant has failed to pay rent in the amount of \$2,000.00 that was due on September 1, 2020 and October 1, 2020. The tenant did not dispute the Second Notice.

### Analysis

Section 88 of the *Act* states that a 10 Day Notice may be served on the tenant in person. I find that the tenant was served with the First 10 Day Notice on September 3, 2020, in accordance with sections 88 of the *Act*.

Based on the undisputed testimony of the agent, I find that the tenant failed to pay the outstanding rent within five days of receiving the First Notice. The tenant has not made application pursuant to section 46(4) of the *Act* within five days of receiving the First Notice. In accordance with section 46(5) of the *Act*, the tenant's failure to take either of these actions within five days led to the end of his tenancy on the effective date of the notice.

In this case, this required the tenant and all other persons residing at the subject rental property to vacate the premises by September 14, 2020. As that has not occurred, 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 and all other persons residing at the rental unit do not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

As I have determined that this tenancy ended pursuant to the First Notice, I decline to consider the Second Notice.

Section 26(1) of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*.

Residential Tenancy Branch Policy Guideline 52 states:

If the tenancy has ended and the landlord wants to pursue an amount of unpaid affected rent, the landlord does not have to give the tenant a repayment plan. The landlord may apply to the RTB for a monetary order

“Affected rent” is rent that becomes due to be paid by a tenant in accordance with a tenancy agreement during the “specified period” between March 18, 2020 and August 17, 2020.

I accept the undisputed testimony of the agent that the tenant owes the landlord \$6,000.00 in unpaid rent. As this tenancy has ended, I find that the landlord is entitled to recover the entirety of outstanding rent owed by the tenant, including “affected rent”, in the amount of \$6,000.00.

Section 72(2) of the *Act* states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I find that the landlord is entitled to retain the tenant’s security deposit in the amount of \$500.00.

As the landlord was successful in this application for dispute resolution, I find that the landlord is entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

### Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service on the tenant**. 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 issue a Monetary Order to the landlord under the following terms:

Item	Amount
Unpaid rent	\$6,000.00
Filing fee	\$100.00
Less security deposit	-\$500.00
<b>TOTAL</b>	<b>\$5,600.00</b>

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: January 18, 2021

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Residential Tenancy Branch