



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR-DR, OPRM-DR, FFL

### Introduction

This hearing was reconvened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the Landlord entitled to an order of possession?

Is the Landlord entitled to unpaid rent?

Is the Landlord entitled to recovery of the filing fee?

### Background and Evidence

The following are agreed facts: the tenancy started on September 1, 2016. Rent of \$4,000.00 is payable on the first day of each month. At the outset of the tenancy the Landlord collected \$2,000.00 as a security deposit and \$2,000.00 as a pet deposit. The Tenant failed to pay rent for September and October 2020 and on October 15, 2020 the Landlord served the Tenant with all three pages of a 10-day notice to end tenancy for unpaid rent (the “Notice”) by posting the Notice on the door and by registered mail. The Notice sets out an effective date of October 30, 2020 and unpaid rent of \$8,000.00. The

Tenant also failed to pay rent for November 2020, December 2020, January 2021 and February 2021. The Tenant did not dispute the Notice, has not paid the rent and has not moved out of the unit.

The Landlord claims an order of possession for February 28, 2020 and unpaid rent of \$24,000.00.

### Analysis

Section 46 of the Act requires that upon receipt of a 10 notice to end tenancy for unpaid rent the tenant must, within five days, either pay the full 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 neither of these two things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice. Based on the agreed facts I find that the Landlord gave the Tenant the Notice and the Tenant did not dispute the Notice or pay the arrears. For these reasons I find that the Tenant is conclusively presumed to have accepted the end of the tenancy and must move out of the unit.

Section 55(2) of the Act provides that where a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired, a landlord may request an order of possession. Based on the agreed facts that the Tenant has not moved out of the unit and as the Landlord made the application seeking an order of possession, I find that the Landlord has substantiated an entitlement to an order of possession effective 1:00 p.m. on February 28, 2021.

Section 26 of the Act provides that a tenant must pay the rent when and as provided under the tenancy agreement whether or not the landlord complies with this Act, the regulations or the tenancy agreement. Based on the agreed facts that the Tenant has not paid the rent for September 2020 to February 2021 inclusive I find that the Landlord

has substantiated an entitlement to **\$24,000.00**. As the Landlord has been successful, I find that the Landlord is also entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$24,100.00**. Deducting the combined security and pet deposits plus zero interest of **\$4,000.00** from this entitlement leaves **\$20,100.00** owed by the Tenant to the Landlord.

#### Conclusion

**I grant** an Order of Possession to the Landlord effective 1:00 p.m. on February 28, 2021. The Tenant must be served with this **Order of Possession**. Should the Tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

**I order** that the Landlord retain the **deposit** and interest of \$4,000.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **\$20,100.00**. If necessary, 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 Act.

Dated: February 09, 2021

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Residential Tenancy Branch