



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNRL, OPR, 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 section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover his filing fee for this application from the tenants pursuant to section 72.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

### Issues(s) to be Decided

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

Is the landlord entitled to a monetary award for unpaid rent?

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

### Background and Evidence

The landlord gave the following testimony. The tenancy began on or about March 1, 2011. Rent in the amount of \$1500.00 is payable in advance on the first day of each month. The tenant failed to pay rent in the month(s) of October 1, 2020 on October 29, 2020 the landlord served the tenant with a notice to end tenancy. The tenant further failed to pay rent in the month(s) of November 2020 – February 2021; inclusive. The landlord advised that as of today's hearing the amount of unpaid rent is \$7500.00. The landlord testified that there was no reduced rent or verbal agreement to have the tenant do repairs on the house in lieu of rent.

The tenant gave the following testimony. The tenant testified that he had a verbal contract with the landlord that the rent would be \$1100.00 a month in exchange for him to make repairs and maintain the home. The tenant testified that he withheld paying the rent when the landlord increased the monthly rent to \$1500.00.

### Analysis

Section 26 of the Act addresses the payment of rent as follows:

#### **Rules about payment and non-payment of rent**

**26 (1)**A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The tenant failed to pay their rent in full within five days of being deemed to have received the 10 Day Notice. The tenant has not made 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 tenants' failure to take either of these actions within five days led to the end of their tenancy on the corrected effective date of the notice. In addition to the above, the tenant does not deny paying rent since October 2020. The tenant made various claims and allegations about a reduced rent and verbal contract to do repairs, however, he did not have sufficient corroborating evidence to justify his nonpayment of rent.

I find that the landlord is entitled to a 2-day Order of Possession. The landlord is granted an Order of Possession pursuant to Section 55 of the Act, which must be served on the tenant(s). If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia. The tenancy is terminated.

The 10 Day Notice to End Tenancy states that rent was not paid on October 1, 2020 which the tenant confirmed. Although the landlord made reference to unpaid rent from April to September, the notice before me does not reflect that. The landlord is at liberty to pursue that claim in a separate hearing. I address the notice and claim that is before me on this date. I am satisfied that the landlord has provided sufficient evidence that rent was not paid since October 1, 2020; that was confirmed by the tenant. I am

satisfied that the tenant continues to owe the landlord unpaid rent. I find that the landlord is entitled to the unpaid rent from October 1, 2020 to today, in the amount of \$7500.00. The landlord is also entitled to the recovery of the \$100.00 filing fee.

### Conclusion

Item	Amount
Unpaid October 2020 Rent	\$1500.00
Unpaid November 2020 Rent	1500.00
Unpaid December 2020 Rent	1500.00
Unpaid January 2021 Rent	1500.00
Unpaid February 2021 Rent	1500.00
Filing Fee	100.00
<b>Total Monetary Order</b>	<b>\$7600.00</b>

I grant the landlord an order under section 67 for the balance due of \$7600.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

The landlord is granted an order of possession and a monetary order for \$7600.00.

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: February 12, 2021

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Residential Tenancy Branch