



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      FFL, OPRM-DR, OPR-DR

### Introduction

The landlord applied for an order of possession for unpaid rent and for a monetary order for unpaid rent, pursuant to sections 55 and 67 of the *Residential Tenancy Act* ("Act"). In addition, the landlord applied for recovery of the filing fee under section 72 of the Act.

The landlord initially applied by way of direct request application on November 30, 2020, and the result of which was the adjudicator adjourned the matter to a participatory hearing on March 19, 2021; the hearing was held by teleconference.

The landlord and their agent attended the hearing, which commenced at 11:00 AM and which ended at 11:16 AM. The tenant did not attend the hearing at any point.

The landlord and their agent gave evidence that the Notice of Dispute Resolution Proceeding package was served on the tenant on December 10, 2020 by way of registered mail. The Canada Post tracking website indicated that the package was delivered. In addition, the agent testified that they attended to the rental unit and confirmed with the tenant, in-person, that they had received the package.

Based on this evidence I am satisfied that the tenant was served with the package and that they were fully aware of the hearing.

### Issues

1. Is the landlord entitled to an order of possession?
2. Is the landlord entitled to a monetary order for unpaid rent?
3. Is the landlord entitled to recover the cost of the filing fee?

### Background and Evidence

Relevant evidence, complying with the *Rules of Procedure*, was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the specific issues of this dispute, and to explain the decision, is reproduced below.

The tenancy began on November 1, 2019, monthly rent is \$1,500.00 which is due on the first of the month, the tenant paid a security deposit of \$750.00, and the tenant paid a pet damage deposit of \$750.00.

Landlord (R.) testified that they purchased the house in June 2020 and took over the tenancy that was in existence. The tenant stopped paying the rent in October 2020, along with the utility bills that they were supposed to be paying. The landlord is finding it increasingly difficult to pay the mortgage because of the tenant's failure to pay rent.

On or about November 16, 2020 the landlord served the tenant (I note that two tenants are listed, though one of them has since left) with a 10 Day Notice to End Tenancy for Unpaid Rent ("Notice"). The Notice, a copy of which was submitted into evidence, indicated that the tenants owed outstanding rent of \$1,500.00 that was due on November 1, 2020. There is in evidence a Proof of Service document confirms that the Notice was served on November 17, 2020.

There is no evidence to suggest or otherwise indicate that the tenant disputed the Notice. Finally, the landlord's application explains that "The tenant has not paid any rent for November 2020 and won't respond to texts or calls or move out."

As of today, the landlord and their agent confirmed that the tenant owes \$7,000.00 in rent arrears and \$900.00 for unpaid utilities, for a total of \$7,900.00.

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 46(1) of the Act states that a landlord "may end a tenancy if rent is unpaid on any day after it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice."

In this dispute, the landlord gave the tenant the Notice on November 17, 2020 for rent that was due on November 1, 2020.

Section 55(2)(b) of the Act states that

A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution: [ . . . ]

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

In addition, section 55(4) of the Act states that

In the circumstances described in subsection (2)(b), the director may, without any further dispute resolution process under Part 5 *[Resolving Disputes]*,

- (a) grant an order of possession, and
- (b) if the application is in relation to the non-payment of rent, grant an order requiring payment of that rent.

In this case, taking into consideration all of the undisputed oral and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving their claim. To summarize: the landlord gave the Notice, the tenant did not dispute the Notice by making an application for dispute resolution, and the time for making that application has now expired. Moreover, the landlord has proven that the tenant owes rent arrears.

As such, pursuant to section 55(4) of the Act, I grant the landlord an order of possession. Further, I grant the landlord an order requiring payment of the rent.

Section 72(1) of the Act permits an arbitrator to order payment of a fee under section 59(2)(c) by one party in a dispute to another party. A successful party is generally entitled to recover the cost of the filing fee. As the landlord was successful in their application, I grant the claim for the \$100.00 filing fee.

In summary, the landlord is awarded compensation in the amount of \$8,000.00.

Section 38(4)(b) of the Act permits a landlord to retain an amount from a security or pet damage deposit if “after the end of the tenancy, the director orders that the landlord may retain the amount.” As such, I order that the landlord may retain the tenant’s security and pet damage deposits of \$1,500.00 in partial satisfaction of the above-noted award.

The balance of the award – \$6,500.00 – is on a monetary order that is issued in conjunction with this decision to the landlord. The landlord must serve a copy of the monetary order on the tenant for the order to be enforceable.

### Conclusion

I HEREBY:

1. GRANT the landlord an order of possession, which must be served on the tenant, and which is effective two (2) days from the date of service. If the tenant refuses to comply with the order of possession, then the landlord may file and enforce the order in the Supreme Court of British Columbia;
2. ORDER the landlord to retain the tenant’s security deposit of \$750.00 and pet damage deposit of \$750.00, pursuant to section 38(4)(b) of the Act; and,
3. GRANT the landlord a monetary order in the amount of \$6,500.00, which must be served on the tenant. If the tenant fails to pay the landlord the amount owed within fifteen (15) days of receiving the order, the landlord may file and enforce the order in the Provincial Court of British Columbia (Small Claims Court).

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: March 19, 2021

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Residential Tenancy Branch