



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

TT: CNR

LL: OPU MNRL-S FFL

### Introduction

This hearing dealt with applications from both the landlord and tenants pursuant to the *Residential Tenancy Act* (the “*Act*”).

The landlord applied for:

- An order of possession pursuant to section 55;
- A monetary award for unpaid rent, damages and loss pursuant to section 67; and
- Authorization to recover the filing fee from the tenant pursuant to section 72

The tenant applied for:

- Cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent pursuant to section 46.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord represented themselves with the assistance of a family member. The tenant chose to exit the call briefly before I concluded the hearing but no further submissions or evidence was provided by the landlord in the tenant’s absence.

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Should the 10 Day Notice be cancelled? If not is the landlord entitled to an Order of Possession?

Is the landlord entitled to a monetary award as claimed?

Is the landlord entitled to recover the filing fee from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agree on the following facts. This tenancy began in November 2020. The monthly rent is \$1,850.00 payable on the first of each month. A security deposit of \$925.00 and pet damage deposit of \$420.00 were collected by the landlord and are still held. The signed tenancy agreement also provides that the tenant is responsible for paying 45% of the utilities for the rental property.

The landlord first issued a 10 Day Notice dated December 12, 2020 indicating a rental arrear of \$1,780.00 and utility arrear of \$175.00. The tenant filed their present application to dispute that Notice on December 16, 2020. The parties agree that the tenant has made some subsequent payments towards the rental and utility arrear and some partial payments for monthly rent but the full amount has not been paid as of the date of the hearing.

The landlord submits that any payment made by the tenant has been for use and occupancy only and they have issued subsequent 10 Day Notices in January and February 2021 for the unpaid rent and utilities owing. The landlord submits that the total amount of the arrear as of the date of the hearing is \$5,124.00. The landlord submitted into documentary evidence a ledger showing rent and utilities due and payments received, utility bills for the rental property, as well as correspondence between the parties requesting utilities be paid.

The tenant acknowledges that there is an arrear but suggests that it is not \$5,124.00 but about \$4,200.00. The tenant explained that they are experiencing financial hardship and that the landlord has accommodated their circumstances in the past. The tenant also gave testimony regarding complaints they have with the tenancy and their neighbors.

### Analysis

In accordance with subsection 46(4) of the *Act*, the tenant must either pay the overdue rent or file an application for dispute resolution within five days of receiving the 10 Day Notice. Where a tenant applies to dispute a 10 Day Notice, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the 10 Day Notice is based. In the present case, the parties agree that there was a rent arrear of \$1,780.00 and utility arrear of \$175.00 at the time the 10 Day Notice was issued. The parties agree that the total arrear has not been paid and there is a rental and utility arrear as the date of the hearing.

I find the tenant's submissions regarding their dissatisfaction with the rental unit or their neighbors to have no bearing on the present application. Pursuant to section 26(1) of the *Act* a tenant must pay rent when it is due, whether or not the landlord has complied with the *Act*, regulations or tenancy agreement.

I find that the landlord's acceptance of partial payments towards the arrear does not constitute waiver of their right to the full rent and utilities owed or their right to pursue an Order of Possession. The landlord issued 10 Day Notices each month indicating and communicated to the tenant that any payments were accepted for use and occupancy only.

I find that an effective 10 Day Notice was issued on December 12, 2020 for rental and utility arrear payable under the tenancy agreement. I accept that the full arrear was not paid by the tenant within the 5 days of receipt of the notice provided under the *Act*. Accordingly, I dismiss the tenant's application and find that the landlord is entitled to an Order of Possession. As the effective date of the 10 Day Notice has passed I issue an Order effective 2 days after service on the tenant.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I accept the evidence of the parties that under the tenancy agreement rent in the amount of \$1,850.00 and a portion of the utilities is payable each month. The parties testified that there is an arrear as at the date of the hearing. While the tenant disagrees with the figure of \$5,124.00 submitted by the landlord, I find that the landlord's submissions are supported with some utility bills and clear calculations. I find the tenant's submissions that a lesser amount is owed to have little evidence in support and provided with little explanation of how they reached this amount. I therefore find that the landlord has met their evidentiary burden on a balance of probabilities that there is a total arrear of \$5,124.00 and issue a monetary award in that amount.

As the landlord was successful in their application they are entitled to recover their filing fee from the tenant.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's security and pet damage deposit in partial satisfaction of the monetary award issued in the landlord's favour

### Conclusion

The tenant's application is dismissed without leave to reapply..

I grant an Order of Possession to the landlord effective **2 days after service on the tenants**. Should the tenant or any occupant on the premises 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 in the landlord's favour in the amount of \$3,879.00 on the following terms:

Item	Amount
Unpaid Rent and Utilities	\$5,124.00
Filing Fee	\$100.00
Less Security Deposit	-\$925.00
Less Pet Damage Deposit	-\$420.00
<b>TOTAL</b>	<b>\$3,879.00</b>

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: March 12, 2021

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Residential Tenancy Branch