



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** OPR-PP, MNRL-S, FFL

### **Introduction**

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the *Act*") for an Order of Possession 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 the filing fee for this application, pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:41 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. The landlord and their daughter in law attended the hearing and was given a full opportunity to be heard, to present sworn 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. During the hearing, I also confirmed from the online teleconference system that the landlord, their daughter in law, and I were the only ones who had called into this teleconference.

The landlord testified that the tenant was sent a copy of the dispute resolution hearing package ('Application') and evidence by way of registered mail on December 26, 2020. The landlord provided the tracking information in their evidence. In accordance with sections 88, 89, and 90 of the *Act*, I find that the tenant deemed served with the Application and evidence on December 31, 2020 five days after mailing. The tenant did not submit any written evidence for this hearing.

The landlord testified that the tenant was served the 10 Day Notice dated December 2, 2020, by posting the notice on his door. In accordance with sections 88 and 90 of the *Act*, the 10 Day Notice I find the 10 Day Notice deemed served on December 5, 2020, three days after its posting.

Although the landlord applied for a monetary Order of \$1,280.78 in their initial claim, the tenant has failed to pay the accrued outstanding rent since this application was filed. Since the filing of the application, another \$5,824.66 in rent has become owing that was not included in the original application. I have accepted the landlord's request to amend their original application from \$1,280.78 to \$7,205.44 (plus \$100.00 filing fee) to reflect the additional unpaid rent that became owing by the time this hearing was convened.

**Issues to be Decided**

Is the landlord entitled to an Order of Possession?

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

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

**Background and Evidence**

This month-to-month tenancy began on January 6, 2020, with currently monthly rent set at \$2,100.00 payable on the first of every month. The tenant paid a security deposit in the amount of \$1,050.00, which the landlord still holds. In addition to the monthly rent, the tenant was on a 9 month payment plan beginning on November 1, 2020, with equal instalments of \$455.78 payable until the outstanding \$4,102.02 was paid in full.

The landlord served the tenant with a 10 Day Notice for unpaid rent on December 2, 2020 as the tenant failed to pay \$825.00 in outstanding rent for December 2020 as well as the \$455.78 payable for the payment plan that month. The landlord testified that since the 10 Day Notice was served, the tenant has failed to pay the outstanding rent, or any rent for the months of December 2019 or January 2020.

Since the 10 Day Notice was served, the tenant had made a payment of \$1,188.60 on December 15, 2020 towards the January 2021 rent, and payments of \$1,188.60 for the months of February and March 2021. The landlord indicated that these payments were for use and occupancy only.

The tenant owes the following outstanding rent:

Item	Amount
Money Owed Under Repayment Plan	\$3,646.24
Unpaid Rent for December 2020	825.00
Unpaid Rent for January 2021	911.40
Unpaid Rent for February 2021	911.40

Unpaid Rent for March 2021	911.40
<b>Total Monetary Order Requested</b>	<b>\$7,205.44</b>

The landlord is seeking an Order of Possession as well as a Monetary Order for unpaid rent and recovery of the filing fee.

### **Analysis**

The landlord provided undisputed evidence at this hearing, as the tenant did not attend. The tenant failed to pay the rent in full, within five days of being deemed to have received the 10 Day Notice. The tenant did not make an 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 failure of the tenant to take either of the above actions within five days led to the end of this tenancy on December 16, 2020, the effective date on the 10 Day Notice. In this case, this required the tenant and anyone on the premises to vacate the premises by December 16, 2020. I find that the landlord's 10 Day Notice complies with section 52 of the *Act*. As the tenant has not moved out, I find that the landlord is entitled to a two (2) day Order of Possession, pursuant to section 55 of the *Act*.

Section 26 of the *Act*, in part, states 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 landlord provided undisputed evidence that the tenant failed to pay \$7,205.44 in outstanding rent for this tenancy. Therefore, I find that the landlord is entitled to \$7,205.44 in outstanding rent for this tenancy.

The landlord continues to hold the tenant's security deposit of \$1,050.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's security deposit in partial satisfaction of the monetary claim.

As the landlord was successful in their application, I find that the landlord is entitled to recover the filing fee for this application.

**Conclusion**

I grant an Order of Possession to the landlord effective **two (2) days after service on the tenant**. Should the tenant or anyone 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 \$6,255.44 Monetary Order in favour of the landlord, which allows the landlord to recover unpaid rent, the filing fee for this application, and also allows the landlord to retain the tenant's security deposit in partial satisfaction of the monetary claim.

<b>Item</b>	<b>Amount</b>
Money Owed Under Repayment Plan	\$3,646.24
Unpaid Rent for December 2020	825.00
Unpaid Rent for January 2021	911.40
Unpaid Rent for February 2021	911.40
Unpaid Rent for March 2021	911.40
Filing Fee	100.00
Less Security Deposit Held	-1,050.00
<b>Total Monetary Order</b>	<b>\$6,255.44</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 16, 2021

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Residential Tenancy Branch