



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPRM-DR, OPR-DR, MNRL, FFL

### Introduction

This hearing dealt with the adjourned Direct Request Application by the Landlord filed under the Residential Tenancy Act (the “*Act*”), for an order of possession to enforce a 10-Day Notice for Unpaid Rent (the Notice) issued on December 28, 2019, and a monetary order for unpaid rent. The matter was set for a conference call.

The Landlord and the Tenant attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenant were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

- Is the Landlord entitled to an order of possession pursuant to section 46 of the *Act*?
- Is the Landlord entitled to a monetary order for unpaid rent?
- Is the Landlord entitled to the return of their filing fee?

### Background and Evidence

The Landlord testified that the tenancy began on September 1, 2019, the Tenant testified that the tenancy began on July 15, 2019. Both parties agree that this is a month-to-month tenancy and that rent in the amount of \$300.00 was due on the first of each month. The parties also agreed that the Tenant had paid the Landlord a \$150.00 security deposit at the beginning of the tenancy.

The Landlord testified that the 10-Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice) was personally delivered to the Tenants on December 15, 2020, listing an outstanding rent amount of \$400.00 and listing an effective date of December 25, 2020. The Notice informed the Tenant of the right to dispute the Notice or pay the outstanding rent within five days after receiving it. The Notice also informed the Tenant that if an application to dispute the Notice or payment of the outstanding rent in full is not made within five days, the Tenant is presumed to have accepted the Notice and must move out of the rental unit on the date set out on page one of the Notice.

The Tenant testified that they had received the Notice and confirmed that they did not dispute the Notice within 5 days of receiving the Notice to End Tenancy. The Tenant testified that all the rent for this tenancy had been paid in cash to the Landlord.

The Landlord testified that they had not received any rent payments for this tenancy since they issued the Notice to end this tenancy. The Landlord testified that the current outstanding rent for this tenancy is \$1,300.00, consisting of \$100.00 for November 2020, \$300.00 for December 2020, \$300.00 for January 2021, \$300.00 for February 2021 and \$300.00 for March 2021.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I accept the agreed-upon testimony that the Tenant received the Notice to End Tenancy on December 15, 2020. Section 46 of the *Act* requires that upon receipt of a Notice to End Tenancy for Non-payment of Rent, a tenant must, within five days, either pay the 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 not do either of these things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice under section 46(5).

***Landlord's notice: non-payment of rent***

**46** (1) *A landlord may end a tenancy if rent is unpaid on any day after the day 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.*

(2) *A notice under this section must comply with section 52 [form and content of notice to end tenancy].*

(3) *A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.*

(4) *Within 5 days after receiving a notice under this section, the tenant may*

*(a) pay the overdue rent, in which case the notice has no effect,*  
*or*

*(b) dispute the notice by making an application for dispute resolution.*

(5) *If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant*

*(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and*

*(b) must vacate the rental unit to which the notice relates by that date.*

In this case, the parties have offered conflicting verbal testimony regarding the payment of rent for this tenancy. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

I have reviewed the totality of the Landlord's testimony and documentary evidence, and I find that, in the absence of any evidence to the contrary from the Tenant, that the Landlord has provided sufficient proof, to satisfy me, that the rent for November, December, January, February and March have not been paid for this tenancy.

Section 55 of the *Act* states that a landlord may request an order of possession if a notice to end the tenancy has been given by the landlord, and the tenant has not

disputed the notice by making an application for dispute resolution and the time for making that application has expired.

***Order of possession for the landlord***

**55** (2) *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) a notice to end the tenancy has been given by the tenant;*
- (b) 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;*
- (c) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;*
- (c.1) the tenancy agreement is a sublease agreement;*
- (d) the landlord and tenant have agreed in writing that the tenancy is ended.*

Therefore, I find that the Landlord is entitled to an order of possession, pursuant to section 55 of the *Act*, effective **two days** after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that the costs of such enforcement are recoverable from the tenant.

I also find that the Landlord has proven their entitlement to a monetary award in the amount of \$1,300.00 for the outstanding rent, consisting of \$100.00 for November 2020, \$300.00 for December 2020, \$300.00 for January 2021, \$300.00 for February 2021 and \$300.00 for March 2021. I grant permission to the Landlord to retain the security deposit for this tenancy in partial satisfaction of this award.

Additionally, section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has been partially successful in his application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for his application.

I grant the Landlord a monetary order in the amount of \$1,250.00, consisting of \$1,300.00 in unpaid rent, \$100.00 for the recovery of the filing fee, less the security deposit of \$150.00 that the Landlord is holding for this tenancy.

Conclusion

I grant an **Order of Possession** to the Landlord effective **two days** after service on the Tenant. The Tenant must be served with this Order. Should the Tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I grant the Landlord a **Monetary Order** in the amount of **\$1,250.00**. The Landlord is provided with this Order in the above terms, and 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