



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PEMBERTON HOLMES LTD. and  
[tenant name suppressed to protect privacy]

## **DECISION**

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

### Introduction

The landlord seeks an order of possession for unpaid rent and a monetary order for unpaid rent, pursuant to sections 55 and 67, respectively, of the *Residential Tenancy Act* (“Act”). In addition, the landlord seeks recovery of the filing fee, pursuant to section 72 of the Act. By way of cross-application, the tenant sought an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent ((the “Notice”) under section 46 of the Act.

Attending the hearing on May 7, 2021 were the landlord’s property manager (referred to as the “agent” in this decision), the property owner, and the property manager’s assistant. The tenant did not attend the hearing, which commenced at 9:30 AM and ended at 9:47 PM. It should be noted that the Residential Tenancy Branch emailed a copy of the Notice of Dispute Resolution Proceeding to the tenant, in respect of his application, on February 11, 2021.

### Issues

1. Is the tenant entitled to an order cancelling the Notice?
2. If not, is the landlord entitled to an order of possession?
3. Is the landlord entitled to a monetary order?
4. Is the landlord entitled to recovery of the application 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 both applications, and to explain the decision, is reproduced below.

The tenancy in this dispute began on August 15, 2020. Monthly rent is \$2,450.00 which is due on the first day of the month. Rent itself is \$2,200.00 and on top of this is a flat rate of \$250.00 which is for the tenant's utilities. This amount is due under the tenancy agreement. Also, worth noting is that the tenant paid a security deposit of \$1,100.00.

A copy of a written tenancy agreement was in evidence.

The landlord issued the Notice on February 3, 2021, which the tenant disputed by filing an application for dispute resolution on February 5, 2021.

The landlord's agent testified that as of May 1, 2021, the tenant is in arrears in the amount of \$10,125.00.

### Analysis

Section 26 of the Act states that

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.

Section 46(1) of the Act states that

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.

And, a notice must comply with section 52 of the Act. (Form and content of the notice.)

Section 46(4) of the Act requires a tenant who has received a notice under section 46(1) to either, within 5 after receiving the notice, (a) pay the overdue rent, or (b) dispute the notice by making an application for dispute resolution.

Section 55(1) of the Act states that

If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

(a) the landlord's notice to end tenancy complies with section 52 *[form and content of notice to end tenancy]*, and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Where a tenant applies to dispute a 10 Day Notice to End Tenancy for Unpaid Rent, the burden is on the landlord to prove, on a balance of probabilities, that the tenant did not pay rent in accordance with the tenancy agreement and the Act.

In this dispute, the landlord's undisputed evidence persuades me to find that the tenant did not and has not paid rent as required by the tenancy agreement. Further, having reviewed the Notice, I find that the Notice complies with section 52 of the Act.

Taking into consideration all the undisputed oral testimony 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 that the tenant did not pay rent in accordance with the tenancy agreement and the Act and I therefore uphold the Notice. Thus, the tenant's application is dismissed, without leave to reapply.

Pursuant to section 55(1) of the Act I grant the landlord an order of possession of the rental unit. The order, which is issued in conjunction with this Decision to the landlord, must be served on the tenant.

In addition, pursuant to section 67 of the Act I award the landlord \$10,125.00 for unpaid rent. Further, as the landlord was successful with their claim, I award \$100.00 to recover the cost of the filing fee under section 72 of the Act, for a total award of \$10,225.00.

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 the tenancy ended on the effective date of the Notice (February 12, 2021), I order that the landlord may retain the tenant's security deposit of \$1,100.00 in partial satisfaction of the above-noted award.

A monetary order in the amount of \$9,125.00 is issued to the landlord, in conjunction with this decision. If the tenant fails to pay the landlord the amount owed within 15 days of receiving the order, the landlord may file and enforce the order in the Provincial Court of British Columbia (Small Claims Court).

Conclusion

I HEREBY:

1. DISMISS the tenant's application, without leave to reapply;
2. 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 fails to vacate the rental unit within two days of being served the order of possession, then the landlord may file and enforce the order in the Supreme Court of British Columbia;
3. ORDER the landlord to retain the tenant's security deposit of \$1,100.00; and,
4. GRANT the landlord a monetary order in the amount of \$9,125.00, which must be served on the tenant. If the tenant fails to pay the landlord the amount owed, the landlord may file and enforce the order in the Provincial Court of British Columbia.

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

Dated: May 7, 2021

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Residential Tenancy Branch