



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

For the tenant: CNR  
For the landlord: MNRL-S, OPC, OPR, FFL

### **Introduction**

On March 18, 2021 the tenant applied for dispute resolution for an order cancelling the 10-Day Notice to End Tenancy Issued for Unpaid Rent or Utilities issued by the landlord (the “10-Day Notice”).

On October 15, 2020 the landlord applied for an order of possession of the rental unit, and a monetary order for rent not paid. Additionally, they applied for reimbursement of the application filing fee.

These matters are crossed and proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on July 5, 2021. The landlord attended the telephone conference call hearing; the tenant did not attend.

### **Preliminary Matter**

The tenant did not attend the hearing, although I left the teleconference hearing connection open until 9:48 a.m. to enable them to call in to this teleconference hearing scheduled for 9:30 a.m. I confirmed the correct call-in numbers and participant codes were provided in the Notice of Hearing generated when they applied. I also confirmed throughout the duration of the call that the tenant was not in attendance.

The *Residential Tenancy Branch Rules of Procedure* Rule 7.3 of the Rules of Procedure provides that if a party or their agent fails to attend the hearing, the arbitrator may conduct the

hearing in the absence of that party or dismiss the application without leave to reapply. On this basis, I dismiss the tenant's application for cancellation of the 10-Day Notice. The tenant does not have leave to reapply on this issue.

#### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession pursuant to s. 55 of the *Act*?

Is the landlord entitled to monetary compensation for unpaid rent and utilities pursuant to s. 67 of the *Act*?

Is the landlord entitled to recover the filing fee for this Application pursuant to s. 72 of the *Act*?

#### Background and Evidence

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

The landlord provided a copy of the tenancy agreement that appears in the evidence. The parties signed the agreement jointly on March 13, 2019 for the month-to-month tenancy starting on March 15. The rent payable was \$1,200 per month, and the tenant initially paid a \$600 security deposit. On these points concerning the initial agreement, there is no evidence contrary to that provided by the landlord here.

The landlord provided a copy of the One Month Notice to End Tenancy for Cause (the "One-Month Notice"), issued February 2, 2021. This gave the reason for its issuance being the tenant repeatedly late paying rent. On page 3, the landlord stated: "Tenant has never paid rent on time." They served this document by providing a copy in the mailbox or mail slot of the rental unit. As provided in a 'Proof of Service' document, a witness observed this service and signed a statement attesting to that on February 3, 2021.

The landlord provided a copy of the 10-Day Notice, issued March 11, 2021. This document gave the move-out date of March 25, 2021. This listed the failure by the tenants to pay the accumulation of rent for \$2,600 on March 1, 2021. The landlord served this document by a copy in the mailbox or mail slot where the person resides. As provided in a 'Proof of Service' document, a witness observed this service and signed a statement attesting to that on March 11, 2021.

On their Application, the landlord listed an amount of rent owing for January (\$200), February and March (\$1,200 each), 2021. They amended the Application to include the months following: April, May and June 2021, to \$6,200. In the hearing, the landlord provided the further amount of rent owing where the tenant had not yet vacated the rental unit by the start of July 2021, bringing the total of their claim for compensation to \$7,400.

The landlord provided a summary of rental payments. In the hearing they testified that the tenant began withholding portions of rent from January 2021 onwards. From February 2021 onwards they did not make rent payments. The landlord also clarified that the tenant was late paying rent consistently through 2020, and they presented the pieces of their evidence that show late payments for April, June, and July 2020.

In the hearing, the landlord stated that they are reasonably confident that the tenant vacated the unit on the day before the hearing. They did not receive a reply to their more recent calls to the tenant in regard to scheduling a final move-out inspection of the rental unit.

### Analysis

From the evidence and testimony of the landlord, I am satisfied that a tenancy agreement was in place. They provided the specific terms of the rent payments as well as the amount the tenants paid for the security deposit. The tenants did not attend the hearing; therefore, there is no evidence before me to show otherwise.

The landlord issued a One-Month Notice on February 2, 2021, then serving that to the tenant on February 3, 2021. This was for repeated late payments of rent. The face of the document contains the important instruction to a tenant on disputing the One-Month Notice within 10 days of receiving it.

By s. 90(d), the One-Month Notice was deemed served to the tenant on February 5, 2021. The tenant did not apply to dispute this One-Month Notice within 10 days granted under s. 47(4) of the *Act*.

Based on the foregoing, I find that the tenant is conclusively presumed under s. 47(5) of the *Act* to have accepted that the tenancy ended on the effective date of the One-Month Notice, March 9, 2021.

On my review of the document, the One-Month Notice contains the necessary elements for it to be effective; therefore, it complies with s. 52.

The *Act* s. 55(1) states that if a tenant applies to dispute a landlord's notice to end tenancy and their Application is dismissed or the landlord's notice is upheld, the landlord must be granted an order of possession if the notice complies with all the requirements of s. 52 of the *Act*. By this provision, I find the landlord is entitled to an Order of Possession.

Concerning a monetary claim, the party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in s. 7 and s. 67 of the *Act*.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

The *Act* s. 26 outlines a tenant's duty to pay rent:

- (1) A tenant must pay rent when it is due under the tenancy agreement, whether 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.

I accept the evidence before me that the tenant failed to pay full rent for January 2021 continuing on with a balance after that, and the months following through to July 2021. This is as represented on the landlord's summary document they put into evidence. I find on a balance of probabilities that these amounts are accurate. As presented, I find the landlord is entitled to the amount of \$7,400 as they claim.

On their Application, the landlord wished to offset the security deposit amount against money owing from the tenant. The *Act* s. 72(2) gives an arbitrator the authority to make a deduction from the security deposit held by the landlord. The landlord has established a claim of \$7,400. After setting off the security deposit amount of \$600, there is a balance of \$6,800. I am authorizing the landlord to keep the security deposit and award the balance of \$6,800 as compensation for rent owing.

As the landlord is successful, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

### Conclusion

Under s. 55(1) and s. 55(3) of the *Act*, I grant an Order of Possession effective two days after service of this Order on the tenant. 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.

Pursuant to s. 67 and s. 72 of the *Act*, I grant the landlord a Monetary Order for the recovery of the amounts claimed and the filing fee paid for this application. This amount is \$6,900. 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 s. 9.1(1) of the *Act*.

Dated: July 5, 2021

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Residential Tenancy Branch