



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **OPR-DR, MNR-DR, FFL**

### Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- An order for possession under a 10-Day Notice to End Tenancy for Unpaid Rent ("Ten-Day Notice") and pursuant to sections 46 and 55;
- Authorization to recover the filing fee for this application pursuant to section 72.

At the outset, the landlord requested a correction of the spelling of the first name of the tenant. The correction was granted, and the proceedings are amended throughout.

This hearing is a continuation of a Direct Request Proceeding which resulted in a Decision dated July 7, 2021. The Adjudicator directed in part as follows:

I order that the direct request proceeding be reconvened in accordance with section 74 of the *Act*. I find that a participatory hearing to be conducted by an arbitrator appointed under the *Act* is required in order to determine the details of the landlord's application.

The landlord provided affirmed testimony that they served the tenant with the Notice of Reconvened Hearing, the interim Decision, and all other required documents upon the tenant in compliance with the Adjudicator's Decision. The landlord testified they sent the documents by registered mail to the tenant on July 8, 2021, two days after the date of the Decision.

The landlord provided the Canada Post Tracking Number and copies of receipts in support of service. Further to the landlord's testimony and supporting documents, I find the landlord served the tenant with the with the Notice of Reconvened Hearing, the interim Decision, and all other required documents on July 13, 2021 pursuant to sections 89 and 90.

The tenant did not attend the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional 29 minutes to allow the tenant the opportunity to call. The teleconference system indicated only the landlord and I had called into the hearing. I confirmed the correct call-in number and participant code for the tenant was provided.

#### Preliminary Amendment

At the outset, the landlord requested two amendments to the landlord's application to change the monetary order for outstanding rent to \$6,400.00 and to authorize the landlord to apply the security deposit of \$925.00 to any award. The landlord's application, submitted on June 9, 2021, pre-dated the due date for amounts owing for rent for subsequent months of July and August 2021.

Also, the landlord testified they overlooked asking that the security deposit to applied to the award.

Section 4.2 of the Rules of Procedure provides that a landlord's monetary claim may be amended at the hearing in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made.

I find the tenant could reasonably anticipate the landlord's claim would be amended to include accruing rent. I also find the tenant could reasonably anticipate that the landlord would request that the security deposit be applied to any award. The amendment would not be prejudicial to the respondent.

Pursuant to my authority under section 64(3)(c) of the Act, I amended the landlord's applications to increase the landlord's overall claim for outstanding rent to \$6,400.00 and to allow the landlord to apply the security deposit of \$925.00 to the award.

The total monetary order requested by the landlord is \$9,970.45 as well as \$100.00 reimbursement of the filing fee. The landlord's claim is amended as set out in the following table:

ITEM	AMOUNT
Rent outstanding	\$6,400.00
Reimbursement filing fee	\$100.00
(Less security deposit)	(\$925.00)
<b>TOTAL CLAIM - DAMAGES</b>	<b>\$5,575.00</b>

### Issues

Is the landlord entitled to the relief requested?

### Background and Evidence

The landlord provided uncontradicted affirmed testimony as the tenant did not appear at the hearing. The landlord submitted a copy of the lease and summarized the background of the tenancy between the landlord and the tenant:

INFORMATION	DETAILS
Type of tenancy	Monthly
Date of beginning	August 15, 2019
Date of ending	ongoing
Monthly rent payable on 1 <sup>st</sup>	\$1,850.00

Security deposit	\$925.00
Pet deposit	none
Forwarding address provided	no
Date of landlords' Application	June 9, 2021

The tenant has not provided written authorization to the landlord to apply the deposit to outstanding rent.

The landlord testified as the arrears of rent as set out earlier. The landlord submitted a copy of a Direct Request Worksheet.

The landlord testified the landlord posted the Ten-Day Notice to the tenant's door on May 14, 2021 thereby effecting service under section 90 of the Act on May 17, 2021. The landlord submitted a copy of the Ten-Day Notice as evidence which is in the standard RTB form. The Notice states the arrears of rent are \$3,700.00.

The Ten-Day Notice provides the tenant had five days from the date of service to pay the rent in full or apply for Dispute Resolution, or the tenancy would end on the stated effective vacancy date of (corrected) May 27, 2021. The landlord testified the tenant did not pay the amount owing in full.

The tenant did not apply to cancel the Notice.

The landlord provided uncontradicted testimony the amount claimed remain unpaid and owing to the landlord.

The tenant continues to occupy the unit.

### Analysis

I find the form and content of the Ten-Day Notice complies with section 52 of the *Act*. I accept the landlord's testimony that the tenant was served with the Ten-Day Notice as testified and in accordance with the *Act*.

I accept the landlord's testimony and documentary evidence and find the tenant did not pay the overdue amount or dispute the Ten-Day Notice within the five-day period following service.

The tenant has not attended the arbitration. Pursuant to section 46(5), the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the Notice requiring the tenant to vacate the rental unit by May 27, 2021.

Based on the landlord's testimony and evidence including testimony that the tenant continues to reside in the unit, I find the landlord has met the burden of proof on a balance of probabilities for an Order of Possession.

I therefore grant the landlord an Order of Possession effective two days after service.

Based on the uncontradicted testimony and documentary evidence of the landlord, I grant the landlord a monetary award pursuant to section 67 for outstanding rent in the amount of \$6,400.00.

As the landlord was successful in this application, I award the landlord the amount of \$100.00 for reimbursement of the filing fee.

I authorize the landlord to apply the security deposit to the award.

My award to the landlord is summarized in the following table:

ITEM	AMOUNT
Rent outstanding	\$6,400.00
Reimbursement filing fee	\$100.00
(Less security deposit)	(\$925.00)
<b>TOTAL Monetary Order</b>	<b>\$5,575.00</b>

In summary, I grant the landlord a Monetary Order for **\$5,575.00** and an Order of Possession effective two days after service.

Conclusion

I grant the landlord a Monetary Order for **\$5,575.00** and an Order of Possession effective two days after service.

These Orders must be served on the tenant. If the tenant fails to comply with these Orders, the landlord may file the Orders with the Courts of British Columbia to be enforced as Orders 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: August 05, 2021

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Residential Tenancy Branch