



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding REMAX LITTLE OAK REALTY and  
[tenant name suppressed to protect privacy]

## **DECISION**

CNR, OPR-DR, FFL

### **Dispute Codes**

### **Introduction**

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlords requested:

- 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 requested:

- cancellation of the landlords’ 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;

While the landlord attended the hearing by way of conference call, the tenant did not. I waited until 9:40 a.m. to enable the tenant to participate in this scheduled hearing for 9:30 a.m. The landlord was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Rule 7.3 of the Rules of Procedure provides as follows:

### **7.3 Consequences of not attending the hearing**

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

The landlord gave sworn testimony that on September 9, 2021 copies of the Application for Dispute Resolution hearing package ('Application') and evidence was served to the tenant by way of registered mail. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with copies of the landlords' application and evidence on September 14, 2021.

The landlord provided undisputed testimony that the tenant was served with the 10 Day Notice, on August 3, 2021 by way of personal service in the presence of a witness and signed and accepted by the tenant. In accordance with sections 88 of the *Act*, I find that the tenant was duly served with the 10 Day Notice on that day.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession based on the 10 Day Notice?

Is the landlord entitled to a monetary award for unpaid rent or money owed under the tenancy agreement, regulation, or *Act*?

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

Background and Evidence

The landlord gave undisputed testimony regarding the following facts. This tenancy began on May 15, 2020, with monthly rent set at \$1000.00, payable on the first of each month. The landlord collected, and still holds, a security deposit of \$500.00. The tenant continues to reside in the rental unit.

The landlord issued the 10 Day Notice on August 3, 2021 to the tenant, indicating an effective move-out date of August 13, 2021. A copy of the 10 Day Notice was included in the landlord's evidence as well as a Proof of Service. The landlord testified that the tenant has not paid any rent since the 10 Day Notice was issued to the tenant.

The landlord testified that the tenant owes \$4000.00 in rent for the months of June 2021 through to September 2021. The total unpaid rent is \$4000.00. The landlord is seeking an Order of Possession, as well as a Monetary Order for \$4100.00 as outlined in the table below and in the landlords' Application:

Item	Amount
Unpaid Rent for June 2021	\$1000.00
Unpaid Rent for July 2021	1000.00

Unpaid Rent for August 2021	1000.00
Unpaid Rent for September 2021	1000.00
Recovery of Filing Fee	100.00
<b>Total Monetary Order</b>	<b>\$4100.00</b>

### Analysis

Section 55(1) of the *Act* reads as follows:

**55** (1) 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.

**In the absence of any evidence or submissions from the tenant, I order the tenant's application dismissed without liberty to reapply.** I find that the 10 Day Notice complies with section 52 of the *Act*.

Based on my decision to dismiss the tenant's application for dispute resolution and pursuant to section 55(1) of the *Act*, I find that this tenancy ended on the corrected effective date of the 10 Day Notice, August 13, 2021. I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

The landlord provided undisputed evidence that the tenant failed to pay the rent in full for the months of June 2021 through to September 2021. Therefore, I find that the landlord is entitled to \$4,000.00 in arrears for the above period.

The landlord continues to hold the tenant's security deposit in the amount of \$500.00. Although the landlord did not apply to retain the security deposit, in accordance with the

offsetting provisions of section 72 of the *Act*, I order the landlords to retain the tenant's security deposit in partial satisfaction of the monetary claim.

I find that the landlord is entitled to recovery the \$100.00 filing fee from the tenant.

### Conclusion

As the tenant did not attend this hearing, their entire application is dismissed without leave to reapply.

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 \$3600.00 Monetary Order in favour of the landlord under the following terms, which allows the landlord to recover unpaid rent and the filing fee, and also allows the landlord to retain the tenant's security deposit:

Item	Amount
Unpaid Rent for June 2021	\$1000.00
Unpaid Rent for July 2021	1000.00
Unpaid Rent for August 2021	1000.00
Unpaid Rent for September 2021	1000.00
Recovery of Filing Fee	100.00
Less Security Deposit	-500.00
<b>Total Monetary Order</b>	<b>\$3600.00</b>

The tenant(s) must be served with this Order as soon as possible. Should the tenant(s) 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: September 23, 2021

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Residential Tenancy Branch