



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

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

### **Introduction**

The hearing was reconvened as a result of the Landlords' application under the *Residential Tenancy Act* (the "Act") for:

- an Order of Possession for non-payment of rent pursuant to sections 46 and 55; and
- a Monetary Order for unpaid rent pursuant to section 55.

The Tenant did not attend this hearing. I left the teleconference hearing connection open until 10:03 am in order to enable the Tenant to call into this teleconference hearing scheduled for 9:30 am. One of the two Landlords ("LL") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding ("NDRP"). I also confirmed from the teleconference system that LL and I were the only ones who had called into this teleconference.

This hearing was reconvened from a non-participatory, *ex parte*, "direct request" proceeding. In an interim decision dated January 10, 2022 ("Interim Decision"), the presiding adjudicator determined that a participatory hearing was necessary to address questions that could not be resolved on the documentary evidence submitted by the Landlords. As a result, this hearing was scheduled and came on for hearing on February 15, 2022, to consider the Landlords' application. Notices of the reconvened hearing were enclosed with the Interim Decision. The Landlords were instructed to serve the NDRP, the Interim Decision and all other required documents, upon the Tenant within three days of receiving the Interim Decision, in accordance with section 89 of the Act.

LL testified the Landlords served the NDRP on the Tenant by registered mail on January 13, 2022. LL submitted a registered mail receipt and tracking number to corroborate her testimony regarding service of the NDRP on the Tenant. I find the Tenant was served with the NDRP on January 13, 2022. Pursuant to section 90, I find the Tenant was deemed to have been served with the NDRP on January 18, 2022, being five days after its posting by the Landlords.

LL stated the Tenant did not serve any evidence on her for these proceedings.

Preliminary Matter – Amendment to Increase Claim for Unpaid Rent and/or Utilities

LL testified that the Ten Day Notice to End Tenancy for Unpaid Rent and/or Utilities dated November 19, 2021 (“10 Day Notice”) served on the Tenant stated the Tenant owed \$669.23 for unpaid rent. LL testified the Tenant has not vacated the rental unit and that the Tenant owed an additional \$4,015.38 for rental arrears that have accrued since the date of the 10 Day Notice. LL requested an amendment to the Landlords’ application to increase the amount of the monetary claim for unpaid rent be increased to \$4,684.61.

Section 4.2 of the *Residential Tenancy Branch Rules of Procedure* state:

**4.2 Amending an application 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, the application may be amended at the hearing.

If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

The Tenant has continued to occupy the rental unit after the effective date of the 10 Day Notice. I find a claim for recovery by the Landlords’ for all the rental arrears arising during the tenancy should have been reasonably anticipated by the Tenant. Based on the above, I order that the Landlords’ application be amended to increase the monetary claim for unpaid rent to \$4,684.61 pursuant to Rule 4.2.

### Issues to be Decided

Are the Landlords entitled to:

- an order of possession?
- a monetary order for unpaid rent?

### Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Landlords' application and my findings are set out below.

LL stated the tenancy commenced on August 1, 2020, for a fixed term ending July 31, 2021, and continuing on a month-to-month basis. The Tenant was required to pay rent of \$1,450.00 on the 1<sup>st</sup> day of each month. LL stated the Tenant was to pay a security deposit of \$725.00 by August 1, 2020. LL stated the Tenant paid the security deposit and LL is holding it in trust on behalf of the Tenant.

LL stated the Tenant had continuous problem paying the rent on time. LL stated the Tenant requested the LL allow him to pay the rent on a bi-weekly basis so that the rent payments would be aligned with his pay from work. LL stated he agreed to the modification of rent payments of \$669.23 on a bi-weekly basis commencing on June 4, 2021.

LL stated he served the 10 Day Notice by posting it on the Tenant's door on November 19, 2021. I find the 10 Day Notice was served by the Landlords on the Tenant in accordance with section 88 of the Act.

The 10 Day Notice stated the Tenant owed rental arrears of \$669.23 as of November 19, 2021. LL stated the Tenant has not paid any rent since the date of the 10 Day Notice and the Tenant now owes a total of \$4,684.61 in rental arrears as follows:

<b>Date</b>	<b>Rent Owed</b>	<b>Paid</b>	<b>Balance</b>
19-Nov-21	\$669.23	\$0.00	\$669.23
03-Dec-21	\$669.23	\$0.00	\$1,338.46
17-Dec-21	\$669.23	\$0.00	\$2,007.69
31-Dec-21	\$669.23	\$0.00	\$2,676.92
14-Jan-22	\$669.23	\$0.00	\$3,346.15
28-Jan-22	\$669.23	\$0.00	\$4,015.38
11-Feb-22	\$669.23	\$0.00	\$4,684.61
<b>Total</b>	<b>\$4,684.61</b>	<b>\$0.00</b>	<b>\$4,684.61</b>

LL stated the Landlords are not aware of the Tenant making an application for dispute resolution to dispute the 10 Day Notice.

### Analysis

#### **1. Landlords' Claim for Order of Possession**

Sections 46(1) and 46(4) of the Act state:

- 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]*.
- (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.*

[emphasis added in italics]

The undisputed testimony of LL was the 10 Day Notice on the Tenant's door on November 19, 2021. Pursuant to section 90, the Tenant was deemed to have received the 10 Day Notice on November 22, 2021. Pursuant to section 46(4) of the Act, the Tenant had until November 29, 2021, being the next business day after the expiry of the 10-day dispute period, to make an application for dispute resolution to dispute the 10 Day Notice. The Tenant did not make an application for dispute resolution. Pursuant to section 46(5)(a), the Tenant was conclusively presumed to have accepted the tenancy ended on the effective date of the 10 Day Notice. The effective date for move out stated in the 10 Day Notice was November 29, 2021. However, the 10 Day Notice was not deemed to have been received by the Tenant until November 24, 2021. Accordingly, the earliest effective date for move-out that complies with section 46(1) of the Act was December 2, 2021. Subsection 53(1) and 53(2) of the Act state:

- 53(1) If a landlord or tenant gives notice to end a tenancy effective on a date that does not comply with this Division, the notice is deemed to be changed in accordance with subsection (2) or (3), as applicable.
- (2) If the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section.

Pursuant to section 53(2), I find the effective date for the 10 Day Notice was deemed to be December 2, 2021. However, the Tenant did not vacate the rental unit on the deemed effective date of the 10 Day Notice and the Tenant continues to occupy the rental unit as of the date of this hearing. Pursuant to section 68(2)(1) of the Act, I order the date the tenancy ends the day of this hearing, being February 15, 2022.

Sections 55(2), 55(3) and 55(4) of the Act state:

- 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.
- (3) The director may grant an order of possession before or after the date when a tenant is required to vacate a rental unit, and the order takes effect on the date specified in the order.
- (4) *In the circumstances described in subsection (2) (b), the director may, without any further dispute resolution process under Part 5 [Resolving Disputes],*
- (a) *grant an order of possession, and*
  - (b) if the application is in relation to the non-payment of rent, grant an order requiring payment of that rent.

[emphasis added in italics]

Based on the undisputed testimony of LL, I find the Tenant owed the Landlords \$669.23 for rental arrears as of November 19, 2021. I find the Landlords have satisfied their onus to prove, on a balance of probabilities, that the 10 Day Notice was issued for a valid reason. I have reviewed the 10 Day Notice and find it complies with the section 52 form and content requirements. Accordingly, pursuant to section 55(4)(a) of the Act, I order the Tenant provide the Landlords with vacant possession of the rental unit.

## 2. Monetary Order for Unpaid Rent:

The undisputed testimony of LL was the Tenant owes a total of \$4,684.61 for rental arrears covering the period from November 19, 2021 to February 11, 2022.

Sections 26 of the Act state:

- 26 (1)** 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.

I am satisfied upon hearing the undisputed testimony of LL that an additional \$4,015.38 of rental arrears accrued since November 19, 2021. With the rental arrears of \$669.23 owing as of the date of the 10 Day Notice, the Tenant owes a total of \$4,684.61 in rental arrears as of the date of this hearing. Pursuant to section 55(4)(b) of the Act, I order the Tenant pay the Landlords \$4,684.61 in satisfaction of the rental arrears owed. Pursuant to section 72(2) of the Act, the Landlords may retain the security deposit in partial satisfaction of the monetary order made above.

### Conclusion:

I order the Tenant deliver vacant possession of the rental unit to the Landlords within two days of being served with a copy of this decision and attached order by the Landlords. 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 order that the Tenant pay the Landlords \$3,959.61, representing the following:

Description	Amount
Rental Arrears for November 19, 2021 to February 15, 2022, inclusive	\$4,684.61
Less Tenant's Security Deposit	-\$725.00
<b>Total</b>	<b>\$3,959.61</b>

This Monetary Order must be served by the Landlords on the Tenant and may be enforced in Provincial 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: February 22, 2022

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Residential Tenancy Branch