



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Brown Bros Agencies Ltd. and  
[tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes

For the Tenant: CNR  
For the Landlord: OPR-DR, MNR-DR, FFL

### Introduction

On December 16, 2021 the Tenant applied for dispute resolution for an order cancelling the 10-Day Notice to End Tenancy Issued for Unpaid Rent or Utilities (the “10-Day Notice”) issued by the landlord on December 8, 2021.

On December 21, 2021 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. The Landlord’s application here was filed initially as a Direct Request. The matter proceeded by way of participatory hearing because this Direct Request application cannot be considered by that method when there is a cross-application by the tenant in place.

Additionally, on January 20, 2022 the Landlord applied via the Direct Request method for an order of possession, in line with a separate notice to end tenancy issued on January 7, 2022.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on March 28, 2022. The Landlord attended the telephone conference call hearing; the Tenant did not attend.

The Tenant’s Application of December 16, 2021 was the first filed in the matter of this tenancy. The Tenant did not attend the hearing, although I left the teleconference hearing open until 1:47pm to enable them to call in to this teleconference hearing scheduled for 1:30pm. I confirmed the correct call-in numbers and participant codes were provided in the Notice of Hearing generated when the Tenant applied. I also confirmed throughout the duration of the call that the Tenant was not in attendance. Additionally, the Landlord provided their input that the Tenant would not attend the hearing with the tenancy already ended.

Rule 7.3 of the *Residential Tenancy Branch 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 December 8, 2021 10-Day Notice. This is without leave to reapply on this issue.

The Landlord in the hearing advised the tenancy previously ended. They obtained an Order of Possession via a separate notice to end the tenancy, and a separate dispute resolution process. They served the Order of Possession, and the Tenant vacated the rental unit on February 4, 2022. They stated the Tenant was definitively moved out from the rental unit, and new tenants took up occupancy in the rental unit as of March 2022.

Because the tenancy ended, I dismiss the Landlord's two Applications for an order of possession. In the hearing, the Landlord acknowledged this. I dismiss the portion of the Landlord's Application from December 21, 2021 for an Order of Possession; however, the remainder of their Application for compensation remains and receives consideration below. I dismiss the Landlord's Application from January 20, 2022 for an Order of Possession in full.

The *Act* allows for the Landlord to recover rent in the situation where a Tenant's Application to cancel a 10-Day Notice is dismissed. This is contingent on the 10-Day Notice complying with the form and content requirements of s. 52. On my review, the 10-Day Notice that was disputed by the Tenant – that of December 8, 2021 – complies with the form and content requirements.

The Landlord provided evidence, backed with their testimony, of the following rent amounts owing by the Tenant:

<b>Rent due date</b>	<b>Rent amount</b>	<b>Amount paid</b>	<b>Outstanding</b>
December 1, 2021	\$1,050.00	\$0	\$1,050.00
January 1, 2022	\$1,050.00	\$0	\$1,050.00
February 1, 2022	\$1,050.00	\$0	\$1,050.00
<b>TOTAL:</b>			<b>\$3,150.00</b>

The Tenant vacated the rental unit on February 4, 2022. I grant the Landlord a monetary award for rent amounts owing, for unpaid rent to February 28, 2022, in accordance with s. 55(1.1) of the *Act*. The Landlord may apply for other monetary amounts owing to them at their discretion.

Because the Landlord was partially successful in one of their claims, I grant partial award of the filing fee. This amount is \$50, added to the Monetary Order. I award this amount by application of s. 72 of the *Act*.

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 \$3,200.00. After setting off the remainder of the security deposit held by the Landlord – the amount of \$425 -- there is a balance of \$2,775.00. I am authorizing the landlord to keep the security deposit amount and award the balance of \$2,775.00 as compensation for the December 2021, January and February 2022 rent amounts.

### Conclusion

In the absence of the Tenant, I dismiss their application in its entirety and without leave to re-apply.

Pursuant to s. 55(1.1) 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 \$2,775.00. The Monetary Order must be served on the Tenant. The Monetary Order may be filed in and enforced as an Order of the Provincial Court of British Columbia (Small Claims).

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: March 29, 2022

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Residential Tenancy Branch