



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding ACTION PROPERTY MANAGEMENT  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      For the tenant: CNR, FF  
For the landlord: OPR, MNR-S, MNDC-S, FF

### **Introduction**

This hearing was convened as the result of the cross applications of the parties for dispute resolution seeking remedy under the Residential Tenancy Act (Act).

The tenant applied for:

- an order cancelling the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (Notice) issued by the landlord; and
- to recover the cost of the filing fee.

The landlord applied for:

- an order of possession of the rental unit pursuant to the Notice served to the tenant,
- a monetary order for unpaid rent;
- compensation for a monetary loss or other money owed;
- authority to keep the tenants' security deposit to use against a monetary award; and
- to recover the cost of the filing fee.

The landlord attended the hearing; the tenant did not attend.

The landlord submitted documentary evidence and testimony showing, that the tenant was served with their Application for Dispute Resolution, evidence, and Notice of Hearing (application package) by registered mail January 18, 2022.

Based upon the landlord's oral and written submissions, I accept the tenant was served notice of this hearing in a manner complying with section 89(1) of the Act, and the hearing proceeded on the landlord's application in the tenant's absence.

The landlord confirmed they were not recording the hearing.

Thereafter the landlord was provided the opportunity to present their evidence and submissions orally, refer to documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed the oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

### **Preliminary and Procedural Matter #1 –**

Despite having their own hearing scheduled for 1:30 pm on March 21, 2022, plus the landlord's application and notice of hearing, the tenant failed to attend the hearing.

Rules 7.3 and 7.4 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.

#### **7.4 Evidence must be presented**

Evidence must be presented by the party who submitted it, or by the party's agent.

If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

Accordingly, **in the absence of any evidence or submissions from the tenant at the hearing, I order their application dismissed, without leave to reapply.**

### **Issue(s) to be Decided**

Is the landlord entitled to an order of possession of the rental unit due to unpaid rent?

Is the landlord entitled to a monetary order for unpaid rent and other monetary compensation, including recovery of the filing fee?

### Background and Evidence

The evidence showed the tenancy began on December 10, 2020, monthly rent is \$2,100, due on the first day of the month, and the tenant paid a security deposit of \$1,050 at the beginning of the tenancy.

The landlords submitted evidence that on December 14, 2021, they served the tenant with the Notice, by attaching it to the tenant's door, listing a total unpaid rent of \$2,100 owed as of December 1, 2021. The effective vacancy date listed on the Notice was December 27, 2021. The Notice was filed into evidence.

The landlord explained that this was the second Notice served to the tenant, as the first Notice dealing with the unpaid monthly rent of December 2021, listed the incorrect unpaid monthly rent.

The tenant did file their application to dispute the first Notice within the 5 days allowed, as their application was made on December 4, 2021.

The landlord submitted that the tenant paid the December 2021 rent by pre-authorized debit, but the payment was returned due to insufficient funds.

The landlord submitted that since the Notice was issued to the tenant, the tenant has failed to pay any rent payment and owes a total of \$8,400 in unpaid monthly rent, as of the day of the hearing. In addition, the tenant owes NSF and late fees of \$100 for the December and January returned payments, according to the landlord. As of the day of the hearing, the tenant owes a total amount of \$8,500.

### Analysis

#### **Order of Possession –**

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so. When a tenant fails to comply with their obligation under the Act and

tenancy agreement, a landlord may serve a tenant a notice seeking an end to the tenancy, pursuant to section 46(1) of the Act, as was the case here.

The Notice informed the tenant that they had five days of receipt of the Notice to file an application for dispute resolution with the Residential Tenancy Branch (RTB) to dispute the Notice or to pay the rent in full; otherwise, the tenant is conclusively presumed to have accepted that the tenancy is ending and must move out of the rental unit by the effective move-out date listed on the Notice.

I find the landlord submitted sufficient and undisputed evidence to prove that the tenant was served a 10 Day Notice, that the tenant owed the unpaid rent listed and did not pay the outstanding rent within five days of service.

While the tenant filed an application for dispute resolution in dispute of the Notice, they did not attend the hearing to offer rebuttal evidence to prove the rent was paid.

As a result, I order the tenancy ended on December 27, 2021, the effective date of the second Notice served to the tenant, and grant the landlord an order of possession of the rental unit pursuant to section 55(2) of the Act, effective **two days** after service of the order upon the tenant.

Therefore, pursuant to section 55(1) of the Act, I find that the landlord is entitled to, and I grant an order of possession for the rental unit effective 2 days after service of the order upon the tenant.

Should the tenant fail to vacate the rental unit pursuant to the terms of the order after being served, the order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court.

The tenant is **cautioned** that costs of such enforcement, **such as bailiff costs** and filing fees, are recoverable from the tenant.

### **Monetary Order –**

I find that the landlord submitted sufficient, undisputed evidence to show that the tenant owes an outstanding balance of \$8,400 in unpaid monthly rent, through the date of the hearing. I also find the tenant owed the amount of \$100 in NSF and late fee charges.

I find the landlord has established a monetary claim of **\$8,500**, for the unpaid monthly rent and NSF/late charges, as noted above.

I also grant the landlord recovery of their filing fee of **\$100**.

I grant the landlord a **monetary order** pursuant to section 67 of the Act for the amount of **\$8,600**.

Should the tenant fail to pay the landlord this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The tenant is **cautioned** that costs of such enforcement are subject to recovery from the tenant.

Further, I allow the landlord to keep the tenant's security deposit of \$1,050 to partially offset their monetary claim of \$8,600, if they choose.

Should the landlord keep the tenant's security deposit of \$1,050, the landlord is to deduct that amount from their monetary order of \$8,600.

### Conclusion

The landlord's application for an order of possession of the rental unit and a monetary order for unpaid rent and NSF/late charges has been granted in the above terms.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: March 21, 2022

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Residential Tenancy Branch