



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNR

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. The Tenant applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice), pursuant to the *Residential Tenancy Act* (the "Act").

The Landlord (respondent) attended the hearing. However, the Tenant (applicant) did not. The hearing was by telephone conference and began promptly, as scheduled, at 11:00 AM Pacific Time on March 28, 2022, as per the Notice of a Dispute Resolution Hearing provided to the Tenant. The line remained open while the phone system was monitored for 10 minutes and the only participant who called into the hearing during this time was the respondent Landlord who was ready to proceed. The Landlord testified that the Tenant moved out of the rental unit suddenly on February 3, 2022, and when she left, there was a large sum or rent owing, and lots of damage.

After the ten minute waiting period, the Tenant's application was **dismissed in full, without leave to reapply**.

Section 55 of the *Act* applies and states:

### **Order of possession for the landlord**

**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.

**(1.1) If an application referred to in subsection (1) is in relation to a landlord's notice to end a tenancy under section 46 [landlord's notice: non-payment of rent], and the circumstances referred to in subsection (1) (a) and (b) of this section apply, the director must grant an order requiring the payment of the unpaid rent.**

[My emphasis added]

Under section 55 of the *Act*, when a Tenant's application to cancel a notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52, I must grant the Landlord an order of possession. Section 52 of the *Act* requires that any notice to end tenancy issued by a landlord must be signed and dated by the landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

I find the Notice issued on December 10, 2021, complies with section 52 of the *Act*, in terms of the form and content requirements. However, given the tenancy is already over, I find it is not necessary to issue an order of possession, pursuant to section 55 of the *Act*.

Next, I turn to section 55 (1.1) of the *Act*, which specifies that I must grant a monetary order for outstanding unpaid rent, provided a valid Notice was issued, and if the Tenant's application to cancel the Notice is dismissed. This means the only remaining issue for this application is what amount of rent is owed. This will be addressed further below.

#### Issue(s) to be Decided

- Is the Landlord entitled to a monetary order for unpaid rent?

#### Background and Evidence

The Landlord testified that rent in the amount of \$1,400.00 is due on the first of each month. The Landlord stated that he did not receive any rent for November, December of 2021, as well as January and February 2022. The Landlord stated that he was able to successfully re-rent the rental unit as of February 15, 2022, despite not being given proper notice from the Tenant regarding her departure. As such, the Landlord is only seeking compensation for the first half of February 2022, which is the period of time the rental unit sat empty, before new tenants could be found. The Landlord stated that the Tenant also accrued 5 x \$25.00 NSF fees over the last few months of the tenancy. In summary, the Landlord stated he is owed \$1,400.00 for November, December and January, plus \$700.00 for February, plus \$125.00 for NSF fees.

### Analysis

Based on the unchallenged affirmed testimony and documentary evidence, and on a balance of probabilities, I find as follows:

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent.

I find there is insufficient evidence the Tenant had any right under the *Act* to withhold rent. I find there is sufficient evidence from the Landlord's testimony to demonstrate that the Tenant owes and has failed to pay \$5,025.00 in rent and NSF fees.

The Landlord is granted leave to reapply for compensation for unpaid utilities, as he did not have that information available in time for this proceeding.

### Conclusion

The Landlord is granted a monetary order pursuant to Section 67 in the amount of **\$5,025.00**. This order must be served on the Tenant. If the Tenants fail to comply with this order the Landlord may file the order in the Provincial Court (Small Claims) and be 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: March 28, 2022