



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

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

### **Introduction**

This hearing, reconvened from an *ex parte* Direct Request proceeding, dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing which lasted approximately 15 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The landlord was represented by their agent (the "landlord") who was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord was made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and they testified that they were not making any recordings.

The landlord testified that they served the tenant with the interim decision of February 3, 2022 and notice of hearing personally on February 9, 2022. Based on the undisputed testimonial evidence I find that the tenant served with the landlord's materials on that date in accordance with sections 88 and 89 of the *Act*.

At the outset of the hearing the landlord requested to amend the amount of their monetary claim indicating that since the application was filed additional rent has come

due. Pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure, as additional rent coming due over time is reasonably foreseeable, I amend the landlord's application to increase their monetary claim from \$10,400.00 to \$18,700.00.

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a monetary award as claimed?

Is the landlord entitled to recover their filing fee from the tenant?

### Background and Evidence

The landlord gave undisputed evidence regarding the following facts. This tenancy began on August 1, 2021. Monthly rent is \$2,800.00 payable on the first of each month. The tenant provided a security deposit of \$1,000.00 which is held by the landlord. A copy of the signed tenancy agreement was submitted into evidence.

The tenant failed to pay rent as required and there was an arrear of \$10,300.00 as at December 7, 2021 giving rise to the issuance of a 10 Day Notice to End Tenancy for Unpaid Rent. The 10 Day Notice was personally served on the tenant on December 7, 2021. The landlord noted that the Proof of Service form erroneously states that the notice was served on an adult who resides in the rental unit. The tenant did not pay the full amount of the arrear or file an application to dispute the 10 Day Notice within 5 days of service or at all.

The tenant failed to pay rent for the subsequent months and there is a total rental arrear of \$18,700.00 as at March 17, 2022, the date of the hearing.

### Analysis

The landlord provided undisputed evidence at this hearing, as the tenant did not attend. I find that the tenant was obligated to pay the monthly rent in the amount of \$2,800.00 pursuant to the signed tenancy agreement. I accept the evidence before me that the tenant failed to pay the full rent on December 1, 2021 and there was a basis for the landlord to issue a 10 Day Notice. I accept the undisputed evidence that the landlord served the 10 Day Notice personally on December 7, 2021 in accordance with section 88 of the *Act*.

I accept the landlord's evidence that the tenant did not pay the full amount of rent due within the 5 days of service granted under section 46(4) of the *Act* nor did they file an application to dispute the notice. Therefore, I find that the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice pursuant to section 46(5) and I issue the landlord an Order of Possession, pursuant to section 55 of the *Act*. As the effective date of the notice has passed I issue an Order enforceable 2 days after service.

I accept the landlord's undisputed evidence that the total amount of arrears for this tenancy is \$18,700.00. I issue a monetary award for unpaid rent owing of \$18,700.00 as at March 17, 2022, the date of the hearing, pursuant to section 67 of the *Act*.

As the landlord's application was successful, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's \$1,000.00 security deposit in partial satisfaction of the monetary award issued in the landlord's favour.

### Conclusion

I grant an Order of Possession to the landlord effective **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 monetary order in the landlord's favour in the amount of \$17,800.00 which allows the landlords to recover unpaid rent and the filing fee for their application and retain the security deposit. The tenant must be served with this Order as soon as possible. Should the tenant 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: March 17, 2022

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Residential Tenancy Branch