

The Landlord was given a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure, and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

1. Is the Landlord entitled to an order of possession for unpaid rent?
2. Is the Landlord entitled to a monetary order for unpaid rent?
3. Is the Landlord entitled to recover the filing fee?

### Background and Evidence

The Landlord testified the tenancy began on November 1, 2020. Rent of \$1,450.00 per month is due on the first day of each month. The Tenant paid a security deposit of \$725.00 which the Landlord holds. A copy of the tenancy agreement was submitted into evidence.

The Landlord testified the Tenant removed some items from the rental unit on February 1, 2022, but some of the Tenant's belongings, including a sofa, a mattress, and some food, are still in the rental unit. The Landlord also testified that the Tenant has not returned the key to the rental unit.

The Landlord testified the Tenant did not pay rent when due on October 1, 2021. Accordingly, the Landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated October 8, 2021, for unpaid rent of \$1,450.00 (the 10 Day Notice). The Landlord testified the 10 Day Notice was served on the Tenant in person on October 8, 2021.

A copy of the 10 Day Notice was submitted into evidence. It is signed and dated by the Landlord, gives the address of the rental unit, states the effective date, states the grounds for ending the tenancy, and is in the approved form.

The Landlord testified the Tenant has not paid rent in full when due. Although partial payments were received by the Landlord in October, November, and December 2021, the Landlord testified the Tenant did not pay rent within five days after receipt of the 10 Day Notice. A significant amount of time was spent confirming partial payments received from the Tenant. The Landlord testified that the Tenant paid rent as follows:

<b>Rent due date</b>	<b>Rent due</b>	<b>Total rent paid</b>	<b>Rent outstanding</b>
October 1, 2021	\$1,450.00	\$1,850.00	(\$400.00)
November 1, 2021	\$1,450.00	\$300.00	\$1,150.00
December 1, 2021	\$1,450.00	\$1,150.00	\$300.00
January 1, 2022	\$1,450.00	\$0	\$1,450.00
February 1, 2022	\$1,450.00	\$0	\$1,450.00
<b>TOTAL:</b>	<b>\$7,250.00</b>	<b>\$3,300.00</b>	<b>\$3,950.00</b>

The Tenant did not attend the hearing to dispute the Landlord's evidence.

### Analysis

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

Section 26(1) of the Act confirms:

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 find the Tenant was served with and received the 10 Day Notice on October 8, 2021. I find the 10 Day Notice complied with the form and content requirements of section 52 of the Act. Therefore, pursuant to section 46(4) of the Act, I find the Tenant had until October 13, 2021, to pay the overdue rent or to dispute the 10 Day Notice by making an application for dispute resolution. There is insufficient evidence before me to conclude the Tenant disputed the 10 Day Notice by making an application for dispute resolution, and the Landlord provided undisputed testimony confirming the Tenant did not pay overdue rent within five days after receipt of the 10 Day Notice.

Considering the above, and pursuant to section 46(5) of the Act, I find the Tenant is conclusively presumed to have accepted the tenancy ended on October 18, 2021, the effective date of the 10 Day Notice, and must vacate the rental unit. In light of the Landlord's uncertainty with respect to the Tenant's occupation of the rental unit, I find it is appropriate to grant the Landlord an order of possession which will be effective two days after it is served on the Tenant.

I also find the Landlord has demonstrated an entitlement to a monetary order for unpaid rent to February 28, 2022, in the amount of \$3,950.00. As the Landlord was aware the Tenant moved out most of her belongings on February 1, 2022, I find the Landlord did not take reasonable steps to minimize his losses in accordance with section 7 of the Act. As a result, I find the Landlord is not entitled to recover unpaid rent after February 28, 2022.

Having been successful, I find the Landlord is also entitled to recover the \$100.00 filing fee paid to make the Application.

I also find it is appropriate in the circumstances to apply the security deposit held in partial satisfaction of the Landlord's monetary claim. Therefore, pursuant to section 67 of the Act, I grant the Landlord a monetary order in the amount of \$3,325.00, which has been calculated as follows:

Unpaid Rent:	\$3,950.00
Filing fee:	\$100.00
LESS security deposit:	(\$725.00)
<b>TOTAL:</b>	<b>\$3,325.00</b>

### Conclusion

The Landlord is granted an order of possession which will be effective two days after it is served on the Tenant. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Landlord is granted a monetary order in the amount of \$3,325.00. 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 Section 9.1(1) of the Residential Tenancy Act.

Dated: March 14, 2022

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Residential Tenancy Branch