



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      TT: CNR, RPP, OLC  
                             LL: OPR-DR, FFL, MNRL, MNDCL

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”).

The Tenants’ Application for Dispute Resolution was made on January 25, 2022 (the “Tenant’s Application”). The Tenants applied for the following relief, pursuant to the *Act*:

- to cancel a 10 Day Notice for Unpaid rent;
- an order for the return of personal property; and
- an order that the Landlord comply with the *Act*.

The Landlord’s Application for Dispute Resolution was made on February 4, 2022 (the “Landlord’s Application”). The Landlord initially applied through the Direct Request process; however, since the Tenant had already filed to dispute the 10 Day Notice to End Tenancy, the Landlord’s Application was scheduled to be heard with the Tenant’s Application. The Landlord applied for the following relief, pursuant to the *Act*:

- an order of possession for unpaid rent;
- a monetary order for unpaid rent; and
- an order granting recovery of the filing fee.

The hearing was scheduled for 11:00 A.M. on April 26, 2022 as a teleconference hearing. The Landlord attended the hearing at the appointed date and time. No one appeared for the Tenants. The conference call line remained open and was monitored for 24 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also

confirmed from the online teleconference system that the Landlord and I were the only persons who had called into this teleconference.

### Preliminary Matters

Rule 7.1 of the Rules of Procedure states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. As the Landlord and I attended the hearing on time and ready to proceed and there was no evidence before me that the parties had agreed to reschedule or adjourn the matter, I commenced the hearing as scheduled at 11:00 A.M. on April 26, 2022.

Rule 7.3 of the Rules of Procedure states that if a party 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 reapply. As neither the Tenants, nor a representative acting on their behalf attended the hearing to present any evidence or testimony for my consideration regarding the Tenants' Application, I therefore dismiss the Tenants' Application in its entirety without leave to reapply.

At the start of the hearing, the Landlord stated that she served the Notice of Hearing to the Tenant in person. The Landlord could not recall what date she served the Tenant, nor did the Landlord have proof that such service took place. As such, I'm not satisfied that the Tenant was sufficiently served with the Landlord's Application, therefore, I dismiss the Landlord's Application.

Regardless, I note that Section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession, and an order requiring the payment of the unpaid rent, if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*. Having made the above finding, I will now turn my mind to whether the Landlord is entitled to an Order of Possession and a monetary order for unpaid rent, pursuant to section 55 of the *Act*.

The Landlord stated that the Tenants vacated the rental unit on February 21, 2022. As such, the Landlord did not require an order of possession. The Landlord stated that there was still an outstanding balance of rent owing. As such, the hearing continued to determine if the Landlord is entitled to a monetary order for unpaid rent pursuant to Section 55 of the *Act*.

The Landlord was given an 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. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Issue(s) to be Decided

1. Is the Landlord entitled to a monetary order for unpaid rent, pursuant to Section 55 and 67 of the *Act*?

#### Background and Evidence

The Landlord testified that the tenancy began on May 1, 2021. The Tenant was required to pay rent in the amount of \$1,400.00 which was due to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$700.00 and a pet damage deposit in the amount of \$700.00, for a combined amount of \$1,400.00 in deposits, currently being held by the Landlord. As previously noted, the tenancy ended on February 21, 2022.

The Landlord testified the Tenants did not pay the full amount of rent when due for January 2022 and paid no rent for February 2022 before the tenancy ended. The Landlord stated that she subsequently served the Tenant with a 10 Day Notice dated January 11, 2022 with an effective date of January 2022 by placing it on the Tenants' door on January 11, 2022.

The Landlord testified that the 10 Day Notice indicates that the Tenant failed to pay rent in the amount of \$700.00. The Landlord stated that the Tenants paid the balance on January 20, 2022, however, failed to pay rent for February 2022, before vacating the rental unit on February 21, 2022. The Landlord stated that the Tenants had also failed to pay \$400.00 for August 2021. As such, the Landlord is seeking a monetary order in the amount of \$1,800.00 for unpaid rent (\$400.00 August 2021 and \$1,400.00 for February 2022).

#### Analysis

Based on the evidence before me, the testimony, and on a balance of probabilities, I find;

Section 26 of the Act states that a Tenant must pay the rent when it is due under the tenancy agreement, whether or not the Landlord complies with the 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.

According to Section 55 of the Act: (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.

I find that the 10 Day Notice complies with the requirements for form and content  
I find the Landlord has established an entitlement to a monetary award for unpaid rent in the amount of \$1,800.00. I find it appropriate in the circumstances to order that the Landlord retain the \$1,400.00 security and pet damage deposits held in partial satisfaction of the claim.

Pursuant to section 67 of the Act, I find the Landlord is entitled to a monetary order in the amount of \$400.00, which has been calculated as follows:

<b>Claim</b>	<b>Amount</b>
Unpaid rent:	\$1,800.00
LESS security/pet deposit:	-( \$1,400.00)
<b>TOTAL:</b>	<b>\$400.00</b>

Conclusion

The Tenant has breached the *Act* by not paying rent when due to the Landlord. The Landlord is granted a monetary order in the amount of \$400.00. The monetary order should be served to the Tenant as soon as possible and 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: April 26, 2022

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Residential Tenancy Branch