



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

For the tenant: CNR

For the landlord: OPR-DR, MNR-DR, FFL

### Introduction

This hearing dealt with a cross application. The tenant's application pursuant to the Residential Tenancy Act (the Act) is for cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice), pursuant to section 46.

The landlord's application pursuant to the Act is for:

- an order of possession under the Notice, pursuant to sections 46 and 55;
- a monetary order for unpaid rent, pursuant to section 26; and
- an authorization to recover the filing fee for this application, under section 72.

I left the teleconference connection open until 11:20 A.M. to enable the tenant to call into this teleconference hearing scheduled for 11:00 A.M. The tenant did not attend the hearing. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

At the outset of the hearing the attending party affirmed he understands it is prohibited to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

### Preliminary Issue - Service of the tenant's application

The landlord confirmed receipt of the tenant's notice of hearing (the tenant's materials) in person and that he had enough time to review it.

Based on the landlord's convincing testimony, I find the tenant served the tenant's materials in accordance with section 89(1)(a) of the Act.

Rules 7.1 and 7.3 of the Rules of Procedure provide as follows:

**Rule 7 – During the hearing**

**7.1 Commencement of the dispute resolution hearing**

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

**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.

Accordingly, in the absence of any attendance at this hearing by the applicant tenant, I order the tenant's application dismissed without leave to reapply.

I note that sections 55(1) and 55(1.1) of the Act require 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 a monetary order for unpaid rent if the application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the Act.

Relying on *M.B.B. v. Affordable Housing Charitable Association*, 2018 BSCS 2418, the landlord must still prove the grounds to end the tenancy when a tenant does not appear to present their application to cancel the notice:

[27] I accept that it was open to the arbitrator to proceed with the hearing or dispense with the hearing altogether and decide the matter in the absence of M.B.B., but in doing so, the arbitrator still had to resolve the issue raised by the application on the merits in some way. It was insufficient to dismiss the application solely on the ground that M.B.B. had not dialed in to the hearing within the first ten minutes as she was supposed to have done.

Preliminary Issue - Service of the landlord's application

I accept the landlord's testimony that the tenant was served with the application and evidence (the landlord's materials) in person on January 28, 2022. The landlord submitted into evidence a proof of service signed by the tenant: "January 28, 2022 I have received the notice of dispute proceeding package in person. Signed: tenant"

Based on the landlord's convincing testimony and the proof of service signed by the tenant, I find the landlord served the landlord's materials on January 28, 2022, in accordance with section 89(2)(a) of the Act.

The landlord amended the application on March 16, 2022. The landlord did not serve the amendment form (RTB 42L).

Rule of Procedure 4.6 states:

4.6 Serving an Amendment to an Application for Dispute Resolution

As soon as possible, copies of the Amendment to an Application for Dispute Resolution form and supporting evidence must be produced and served upon each respondent by the applicant in a manner required by section 89 of the Residential Tenancy Act or section 82 of the Manufactured Home Park Tenancy Act and these Rules of Procedure.

The applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Amendment to an Application for Dispute Resolution form and supporting evidence as required by the Act and these Rules of Procedure.

In any event, a copy of the amended application and supporting evidence should be served on the respondents as soon as possible and must be received by the respondent(s) not less than 14 days before the hearing.

Per Rule of Procedure 4.6, the landlord's amendment is not accepted.

Preliminary Issue – Update of the Tenancy and tenant's Addresses

At the outset of the hearing the landlord corrected the tenancy and tenant's addresses.

Pursuant to section 64(3)(a) of the Act, I have amended the tenant's application.

Preliminary Issue – Amendment of the monetary claim

At the hearing the landlord sought to amend his application for \$1,900.00 in unpaid rent to include an additional \$4,500.00 for the unpaid rent of February, March and April 2022.

The increase in the landlord's monetary claim for unpaid rent should have been reasonably anticipated by the tenant. Therefore, pursuant to section 4.2 of the Rules of Procedure and section 64 of the Act, I amend the landlord's monetary claim for unpaid rent to \$6,400.00.

### Issues to be Decided

Is the landlord entitled to:

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

### Background and Evidence

While I have turned my mind to the evidence of the attending party, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below. I explained rule 7.4 to the attending party; it is the landlord's obligation to present the evidence to substantiate the application.

The landlord affirmed the tenancy started on June 01, 2021. Monthly rent is \$1,500.00, due on the first day of the month. At the outset of the tenancy a security deposit (the deposit) of \$750.00 was collected and the landlord holds it in trust. The tenancy agreement was submitted into evidence.

The tenant paid December 2021 rent in the amount of \$1,100.00 in December 2021.

The landlord served the Notice in person on January 02, 2022. The landlord submitted a proof of service (RTB form 34) signed by the tenant confirming receipt of the Notice on January 02, 2022.

A copy of the Notice was submitted into evidence. It is dated January 02, 2022 for the balance of December 2021 rent in the amount of \$400.00 and January 2022 rent in the amount of \$1,500.00. The Notice is signed by the landlord, gives the address of the rental unit, states the ground to end the tenancy and it is in the approved form. The effective date is January 12, 2022.

The tenant continues to occupy the rental unit and tried to pay the amount of \$1,650.00 for March 2022 rent and utilities in March 2022. The landlord did not receive the payment of \$1,650.00 because the landlord did not want to reinstate the tenancy.

The landlord submitted a direct request worksheet.

### Analysis

I accept the uncontested testimony offered by the landlord and the proof of service (RTB 34) that the landlord served the Notice in person on January 02, 2022, in accordance with section 88(a) of the Act.

### Order of possession

Based on the landlord's convincing testimony and the tenancy agreement, I find that the landlord and the tenant agreed to a tenancy and the tenant is obligated to pay monthly rent in the amount of \$1,500.00 on the first day of each month.

Pursuant to section 46(1) of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

Based on the landlord's convincing testimony, the Notice and the direct request worksheet, I find the tenant has not paid the balance of December 2021 rent, January, February, March and April 2022 rent.

I find the form and content of the Notice complies with section 52 of the Act, as it is signed by the landlord, gives the address of the rental unit, states the ground to end tenancy and the effective date and it is in the approved form.

Section 68(2) of the Act states:

- (2) Without limiting section 62 (3) [director's authority respecting dispute resolution proceedings], the director may, in accordance with this Act,
  - (a) order that a tenancy ends on a date other than the effective date shown on the notice to end the tenancy

Based on the above, as the tenant is currently occupying the rental unit, I find the tenancy ends on the date of this decision, per section 44(1)(a)(ii) and 68(2)(a) of the Act.

I award the landlord an order of possession, per section 55(1)(b) of the Act.

### Monetary order

Section 26(1) of the Act states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act.

Section 57(3) of the Act states: "A landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended."

Based on the landlord's undisputed testimony, the Notice and the direct request worksheet, I find the tenant did not pay the rent in accordance with section 26(1) of the Act.

Per section 26(1) of the Act, I award the landlord the balance of December 2021 rent in the amount of \$400.00 (\$1,500.00 subtracted the payment of \$1,100.00), January, February, March rent in the amount of \$1,500.00 per month and *per diem* rent from April 01 to 06, 2022 (the date of this decision), in the amount of 300.00 ( $\$1,500.00/30 \times 6$  days).

The landlord is at liberty to apply for compensation for overholding tenant.

For the purpose of educating the landlord, I note that if the landlord receives rent after the effective date of the Notice and issues a receipt for use and occupancy only the tenancy is not reinstated.

I warn the tenant that he may be liable for any costs the landlord incurs to enforce the order of possession.

#### Filing fee, Deposit and summary

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

As explained in section D.2 of Policy Guideline #17, section 72(2)(b) of the Act provides that where an arbitrator orders a party to pay any monetary amount or to bear all or any part of the cost of the application fee, the monetary amount or cost awarded to a landlord may be deducted from the deposit held by the landlord. I order the landlord to retain the \$750.00 deposit in partial satisfaction of the monetary award.

In summary:

Item	Amount \$
Balance of unpaid rent December 2021	400.00
Unpaid rent January, February and March 2022 (\$1,500.00 x 3)	4,500.00
Unpaid rent April 01 to 06, 2022	300.00
Filing fee	100.00
Subtotal	5,300.00
Deposit (minus)	750.00
<b>Total:</b>	<b>4,550.00</b>

### Conclusion

Pursuant to section 55(1)(b) of the Act, I grant an order of possession to the landlord effective two days after service of this order on the tenant. Should the tenant fail to comply with this order, this order may be filed and enforced as an order of the Supreme Court of British Columbia.

Per sections 26 and 72 of the Act, I authorize the landlord to retain the \$750.00 deposit and award the landlord \$4,550.00. The landlord is provided with this order in the above terms and 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: April 06, 2022

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Residential Tenancy Branch