



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

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

### Introduction

This hearing, redirected from a 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 from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord was represented by an agent (the "landlord").

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

As both parties were present service was confirmed. The tenant testified that they received the landlord's materials and had not served any materials of their own. Based on the undisputed testimonies I find the tenant duly served in accordance with sections 88 and 89 of the *Act*.

### 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 the filing fee from the tenant?

### Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agree on the following facts. The monthly rent for this periodic tenancy is \$1,196.00 payable on the first of each month. The landlord holds a security deposit of \$575.00. The tenant failed to pay rent as required under the tenancy agreement and there was an arrear of \$252.00 as at February 1, 2022. The landlord issued a 10 Day Notice dated February 8, 2022. The tenant confirmed that they were served with the 10 Day Notice and did not file an application to dispute nor pay the full amount of the arrear within 5 days.

The tenant next made payment towards rent on March 1, 2022 in the amount of \$1,170.00. The parties agree that the landlord issued a receipt to the tenant indicating that the payment was accepted for use and occupancy only and did not reinstate the tenancy. The parties agree that the landlord has issued subsequent receipts for any payments made by the tenant indicating that they too were accepted for use and occupancy only.

The parties submit that as at the date of the hearing, May 20, 2022, there is an arrear of \$50.00.

### Analysis

I find that the tenant was obligated to pay the monthly rent in the amount of \$1,196.00 pursuant to the tenancy agreement. I accept the undisputed evidence of the parties that the tenant failed to pay rent as required and there was an arrear of \$252.00 as at February 8, 2022 giving rise to the issuance of the 10 Day Notice.

I accept the undisputed evidence of the parties that the tenant was served with the 10 Day Notice on February 8, 2022 and they did not pay the full amount of the rent due nor did they file an application to dispute the notice with 5 days. I accept the agreed upon evidence of the parties that any payments made by the tenant were clearly indicated to be accepted for use and occupancy only and did not reinstate the tenancy.

Therefore, pursuant to section 46(5) of the *Act*, I find the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the tenancy.

Accordingly, I issue an Order of Possession in the landlord's favour pursuant to section 55 of the *Act*.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

I accept the agreed upon evidence of both parties that there is a rental arrear of \$50.00 as at May 20, 2022, the date of the hearing. I therefore issue a monetary award in that amount in the landlord's favour.

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 \$150.00 of the tenant's \$575.00 security deposit in satisfaction of the monetary award issued in the landlord's favour.

### Conclusion

I grant an Order of Possession to the landlord effective **1:00PM on May 31, 2022**. 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.

The landlord is authorized to retain \$150.00 of the security deposit for this tenancy. The deposit is reduced by that amount to \$425.00 accordingly.

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: May 20, 2022

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Residential Tenancy Branch