



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

OPR, OPC, CNC, MNRL, MNDCL, FFL

### **Introduction**

This hearing was convened in response to cross applications.

On February 11, 2022 the Landlord filed an Application for Dispute Resolution in which the Landlord applied for an Order of Possession for Unpaid Rent or Utilities, a monetary Order for unpaid rent or utilities. The female Agent for the Landlord stated that the Landlord cancelled this Application for Dispute Resolution.

The Residential Tenancy Branch does not have a record of the aforementioned Application for Dispute Resolution being cancelled, however on the basis of the information provided at the hearing, I find this Application for Dispute Resolution has been withdrawn.

On March 27, 2022 the Landlord filed an Application for Dispute Resolution in which the Landlord applied for an Order of Possession for Unpaid Rent or Utilities, an Order of Possession for Cause, a monetary Order for unpaid rent or utilities, a monetary Order for money owed or compensation for damage or loss, and to recover the fee for filing this Application for Dispute Resolution

The female Agent for the Landlord stated that on April 01, 2022 the Dispute Resolution Package filed on March 27, 2022 was posted on the door of the rental unit. The Tenant stated that these documents were personally served to him just prior to them being posted on his door on April 01, 2022.

The Tenant filed an Application for Dispute Resolution in which the Tenant applied to cancel a One Month Notice to End Tenancy for Cause. The Tenant stated that his Dispute Resolution Package was personally served to the Landlord, although he cannot recall the date of service. The Landlord stated that these documents were received from the Tenant sometime in late February of 2022.

The Landlord submitted evidence to the Residential Tenancy Branch on February 14, 2022. The Landlord stated that these documents were personally served to the Tenant on February 09, 2022. The Tenant stated that he did not receive this evidence. As the Tenant did not acknowledge receiving this evidence and the Landlord did not submit evidence to corroborate her testimony that it was served, this evidence was not accepted as evidence for these proceedings.

The female Agent for the Landlord that the evidence submitted on February 14, 2022 was submitted in support of the Application for Dispute Resolution that was cancelled by the Landlord. As this evidence is related to the Application for Dispute Resolution that has been withdrawn, I find that there is no need to consider an adjournment to provide the Landlord with an opportunity to re-serve the evidence.

The Landlord submitted evidence to the Residential Tenancy Branch in March of 2022. The Landlord stated that these documents were posted on the Tenant's door with the Application for Dispute Resolution. The Tenant acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

The Landlord submitted evidence to the Residential Tenancy Branch on April 09, 2022. The Landlord stated that these documents were personally served to the Tenant in April, although she does not know the exact date of service. The Tenant acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

The Landlord submitted evidence to the Residential Tenancy Branch on April 21, 2022. The Landlord stated that these documents were personally served to the Tenant in April, although she does not know the exact date of service. The Tenant acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

The Tenant submitted evidence to the Residential Tenancy Branch in February of 2022. The Tenant stated that these documents were personally served to the Landlord on February 12, 2022 or February 15, 2022. The Landlord acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

The Tenant submitted evidence to the Residential Tenancy Branch in April of 2022. The Tenant stated that these documents were personally served to the Landlord on April 25, 2022. The Landlord acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

#### Preliminary Matter

At the hearing the Landlord applied to amend the Application for Dispute Resolution to include all rent that is currently due. I find that it was reasonable for the Tenant to conclude that the Landlord is seeking to recover all of the rent that is currently due, including unpaid rent that has accrued since the Application for Dispute Resolution was filed. I therefore grant the application to amend the monetary claim to include all rent that is currently due.

#### Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession and to a monetary Order for unpaid rent?

Should the One Month Notice to End Tenancy for Cause be set aside?

#### Background and Evidence

The Landlord and the Tenant agree that:

- this tenancy began in July of 2020;
- the Landlord and the Tenant have a verbal tenancy agreement for the basement suite;
- the Tenant agreed to pay monthly rent of \$800.00 by the first day of each month;
- the Landlord agreed to reduce the rent for February of 2022 by \$200.00; and
- the Tenant did not pay any rent for March, April or May of 2022.

The Tenant stated that he or his sister paid \$400.00 in rent for February of 2022, by e-transfer on February 15, 2022 “or something”. The Landlord stated that no rent was paid for February of 2022. The Tenant acknowledged that he submitted no evidence of a rent payment in February of 2022.

The Landlord and the Tenant mutually agreed to settle the Tenant’s application to cancel a One Month Notice to End Tenancy for Cause and the Landlord’s application for an Order of Possession under the following terms:

- the tenancy will end, by mutual agreement, on May 07, 2022; and
- the Tenant will vacate the rental unit by May 07, 2022.

The aforementioned terms were summarized for the parties on at least two occasions. The Landlord and the Tenant clearly indicated their intent to resolve the application to cancel the One Month Notice to End Tenancy for Cause and the Landlord’s application for an Order of Possession in accordance with these terms.

The Landlord and the Tenant each acknowledged that they understand they were not required to enter into this settlement agreement and that they were doing so voluntarily.

The Landlord and the Tenant each acknowledged that they understood the settlement agreement was final and binding.

### Analysis

I find that the Landlord and the Tenant mutually agreed to settle the Tenant’s application to cancel a One Month Notice to End Tenancy for Cause and the Landlord’s application for an Order of Possession under the following terms:

- the tenancy will end, by mutual agreement, on May 07, 2022; and
- the Tenant will vacate the rental unit by May 07, 2022.

On the basis of the undisputed evidence, I find that the Tenant entered into an oral tenancy agreement with the Landlord that required the Tenant to pay monthly rent of \$800.00 by the first day of each month. On the basis of the undisputed evidence that the Landlord reduced the rent for February of 2022 by \$200.00, I find that the Tenant was only required to pay \$600.00 in rent for February of 2022.

On the basis of the undisputed evidence, I find that the Tenant has not paid any rent for March, April, or May of 2022. The Tenant is obligated to pay rent pursuant to section 26 of the *Act*. As the Tenant occupied the rental unit in March and April of 2022, I find that he must pay \$1,600.00 in rent for those two months. As the parties agreed that the Tenant could retain possession of the rental unit until May 07, 2022, I find that the Tenant must pay per diem rent for those seven days, in the amount of \$180.67.

When a tenant alleges that rent was paid and the landlord disputes that submission, the burden of proving that rent was paid reverts to the tenant. I find that the Tenant submitted insufficient evidence to corroborate his testimony that rent of \$400.00 was paid for February of 2022. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Tenant's testimony that this rent was paid by e-transfer for that month. In circumstances where such evidence can be submitted with reasonable diligence, I find that such evidence should be submitted,

As the Tenant has submitted insufficient evidence that rent of \$400.00 was paid for February of 2022, I find that the Tenant still owes \$600.00 in rent for that month.

In the event the Tenant remains in possession of the rental unit after May 07, 2022, the Landlord retains the right to file an Application for Dispute Resolution seeking compensation for lost revenue.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the cost of filing one Application for Dispute Resolution.

### Conclusion

On the basis of the settlement agreement reached at the hearing, I grant the Landlord an Order of Possession that is effective at 1:00 p.m. on May 07, 2022. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

The Landlord has established a monetary claim, in the amount of \$2,480.67, which includes \$2,380.67 in unpaid rent and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution.

Based on these determinations I grant the Landlord a monetary Order for \$2,480.67. In the event the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims 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 *Act*.

Dated: May 05, 2022

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Residential Tenancy Branch