



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **TT: CNR, FFT**  
                             **LL: OPR, MNR-DR, FFL**

### Introduction

This hearing dealt with two applications pursuant to the *Residential Tenancy Act* (the “Act”). The Tenant made one application (“Tenant’s Application”) for:

- cancellation of a Ten Day Notice for Unpaid Rent and/or Utilities dated February 2, 2022 (“10 Day Notice”) pursuant to section 46; and
- authorization to recover the filing fee of the Tenant’s Application from the Landlord pursuant to section 72.

The Landlord made one application (“Landlord’s Application”) for:

- an Order of Possession pursuant to sections 46 and 55;
- a monetary order for unpaid rent owing by the Tenant to the Landlord pursuant to section 55 and 67; and
- authorization to recover the filing fee of the Landlord’s Application from the Tenant pursuant to section 72.

The Landlord and Tenant attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The Landlord called two witnesses (“CB” and “SO”) to provide affirmed testimony when required.

### Preliminary Matter – Service of Tenant’s NDRP on Landlord

The Tenant stated he served his Notice of Dispute Resolution Proceeding (“Tenant’s NDRP”) on the Landlord in-person on February 14, 2022. The Landlord denied being served with the Tenant’s NDRP in-person or by any other method of service. The

Tenant did not provide submit any evidence, or call any witnesses, to corroborate his evidence that he served the Tenant's NDRP on the Landlord. I find the Tenant's NDRP was not served in accordance with the provisions of section 89 of the Act. As such, I dismiss the Tenant's Application without leave to reapply.

#### Preliminary Matter – Service of Landlord's NDRP on the Tenant

The Landlord stated he served his Notice of Dispute Resolution Proceeding ("Landlord's NDRP") and his evidence (collectively the "Landlord's NDRP Package") on the Tenant in-person on February 17, 2022. The Tenant denied being served with the Landlord's NDRP Package in-person. The Landlord called CB as a witness who testified he saw the Landlord serve the Tenant with the Landlord's NDRP Package on February 17, 2022. The Landlord called SO as a witness who testified that (i) she assisted the Landlord to make the Landlord's Application; (ii) attended at ServiceBC with the Landlord to pickup up the Landlord's NDRP and; (iii) witnessed the Landlord serve the Landlord's NDRP Package on the Tenant. I find the Landlord's NDRP Package was served on the Tenant in accordance with the provisions of sections 88 and 89 of the Act.

#### Preliminary Matter – Correction of Rental/Tenant's Addresses in Tenant's Application

At the outset of the hearing, I noted the rental address and Tenant's address in the Tenant's Application was different from the addresses stated in the 10 Day Notice and the Landlord's Application. After some discussion, the Tenant requested I make an amendment to the Tenant's Application to correct rental address and Tenant's address.

### **.2 Amending an application at the hearing**

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

With the consent of the Landlord, I amended the Tenant's Application to correct the rental address of Tenant's address.

### Issues to be Decided

Is the Landlord entitled to:

- an Order of Possession?
- a Monetary Order for unpaid rent owing by the Tenant to the Landlord?
- authorization to recover the filing fee of the Landlord's Application from the Tenant?

### Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony CC, only the details of the respective submissions and/or arguments of CC relevant to the issues and findings in this matter are reproduced here. The relevant aspects of the claims made in the Landlord's Application and my findings are set out below.

The Landlord submitted a copy of the tenancy agreement between the Landlord and Tenant. The Landlord stated the tenancy commenced on March 1, 2021 with rent of \$850.00 payable on the 1<sup>st</sup> day of each month. The Tenant was to pay a security deposit of \$425.00. The Tenant acknowledged the terms of the tenancy provided by the Landlord were correct. The Landlord stated the Tenant paid the security deposit and that he was holding it in trust on behalf of the Tenant.

The Landlord submitted a copy of the 10 Day Notice and stated he served it on the Tenant's door on February 2, 2022. The Landlord submitted a signed and witnessed Proof of Service on Form RTB-34 to corroborate his testimony on service of the 10 Day Notice on the Tenant. I find the Landlord served the 10 Day Notice on the Tenant in accordance with the provisions of section 88 of the Act.

The Landlord testified the 10 Day Notice stated the Tenant owed \$850.00 as of February 1, 2022. The Landlord stated the Tenant did not pay the rent for the months of February through May 2022 inclusive and that the Tenant had rental arrears of \$3,400.00 calculated as follows:

Date	Rent Owed	Paid	Balance
01-Feb-22	\$850.00	\$0.00	\$850.00
01-Mar-22	\$850.00	\$0.00	\$1,700.00
01-Apr-22	\$850.00	\$0.00	\$2,550.00
01-May-22	\$850.00	\$0.00	\$3,400.00
<b>Total</b>	<b>\$3,400.00</b>	\$0.00	<b>\$3,400.00</b>

The Tenant stated he paid the rent in full when it was due in cash. The Tenant stated the Landlord does not issue receipts for payments of rent. When I asked, the Tenant stated he did not have any witnesses who could corroborate his claim that he paid the rent to the Landlord in cash and did not receive a receipt. When I asked, the Tenant stated he did not always withdraw moneys from his bank account that were contemporaneously paid to the Landlord.

### Analysis

Sections 46(1) through 46(4) of the Act state:

- 46(1)** 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*.
- (2) A notice under this section must comply with section 52 [*form and content of notice to end tenancy*].
- (3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.
- (4) Within 5 days after receiving a notice under this section, the tenant may
  - (a) pay the overdue rent, in which case the notice has no effect, or
  - (b) dispute the notice by making an application for dispute resolution.

The Landlord stated he served the 10 Day Notice on the Tenant's door on February 2, 2022. Pursuant to section 90, the Tenant was deemed to have received the 10 Day Notice on February 5, 2022. Pursuant to section 46(4) of the Act, the Tenant had 5 days, or February 10, 2022, within which to make an application for dispute resolution to dispute the 10 Day Notice. The records of the Residential Tenancy Branch disclose the Tenant made the Tenant's Application on February 4, 2022. Accordingly, the Tenant made his application within the five-day dispute period. The Landlord made the

Landlord's Application on February 11, 2022, being the day after the expiry of the 5-day dispute period the Tenant had to make the Tenant's Application. As such, the date the Landlord's made the Landlord's Application was in accordance with the provisions of section 46 of the Act.

The Landlord testified the Tenant failed to pay the rent for February through May 2022 inclusive. The Tenant stated he paid the rent to the Landlord in cash and the Landlord did not issue receipts.

Given the conflicting testimony, much of this case hinges on a determination of credibility. A useful guide in that regard, and one of the most frequently used in cases such as this, is found in *Faryna v. Chomy* (1952), 2 D.L.R. 354 (B.C.C.A.), which states at pages 357-358:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanor of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those circumstances.

In this case, the Tenant vehemently denied the Landlord served him with the Landlord's NDRP Package. The Landlord called CB and SO as witnesses who gave affirmed testimony that they witnessed the Landlord serve the Landlord's NDRP Package on the Tenant. As such, when assessing the Tenant's testimony during the hearing, I found his demeanour to be confrontational, and his testimony to be evasive and inconsistent, particularly in respect of his denial that he was served by the Landlord. It is difficult to believe the Tenant would not recall in-person service by the Landlord who was accompanied with two witnesses. As such, I give little weight to the credibility or reliability of the Tenant's testimony and submissions. Based on the foregoing, I accept the Landlord's testimony in it's entirety.

Section 26(1) of the Act states:

- 26 (1) 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 did not pay the rent of \$850.00 as of February 1 2022. As such, I find the 10 Day Notice was issued for a valid reason.

I find the Landlord has demonstrated, on a balance of probabilities, that there is cause to end this tenancy.

Sections 55(1) and 55(1.1) of the Act state:

- 55(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 the 10 Day Notice meets the form and content requirements of section 52 of the Act. Pursuant to section 55(1) of the Act, I grant the Landlord an Order of Possession effective two days after she serves the Tenant with a copy of this decision and attached order. As the Tenant has not vacated the rental unit, I order pursuant to 68(2)(a) that the tenancy ended on May 13, 2022.

I find the Tenant has rental arrears of \$3,400.00 for the period February to May 2022 inclusive. Based section 55(1.1) of the Act, I order the Tenant pay the Landlord \$3,400.00 for the rental arrears as specified above. Pursuant to section 72(2) of the Act, the Landlord may retain the security deposit of \$425.00 in partial satisfaction of the Monetary Order made above.

As the Landlord has been successful in the Landlord's Application, pursuant to section 72(1) I order the Tenant pay for the Landlord's filing fee.

*Residential Tenancy Branch Policy Guideline 3* states in part:

**B. Overholding tenant and compensation**

Section 44 of the RTA (section 37 of the MHPTA) sets out when a tenancy agreement will end. *A tenant is not liable to pay rent after a tenancy agreement has ended. If a tenant continues to occupy the rental unit or manufactured home site after the tenancy has ended (overholds), then the tenant will be liable to pay compensation for the period that they overhold pursuant to section 57(3) of the RTA (section 50(3) of the MHPTA). This includes compensation for the use and occupancy of the unit or site on a per diem basis until the landlord recovers possession of the premises.* In certain circumstances, a tenant may be liable to compensate a landlord for other losses associated with their overholding of the unit or site, such as for loss of rent that the landlord would have collected from a new tenant if the overholding tenant had left by the end of the tenancy or for compensation a landlord is required to pay to new tenants who were prevented from taking occupancy as agreed due to the overholding tenant's occupancy of the unit or site.

[emphasis in italics added]

Based on PG 3, Landlord has the option of making an application for dispute resolution to seek compensation for use and occupation of the rental unit by the Tenant for any time he overholds the rental unit after May 13, 2022.

Conclusion

The Tenant's Application is dismissed without leave to reapply.

Pursuant to section 55(1) of the Act, I order the Tenant deliver vacant possession of the rental unit to the Landlord within two days of being served with a copy of this decision. 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.

Pursuant to section 55(1.1) of the Act, I order the Tenant pay the Landlord \$3,075.00 representing the following:

Description	Amount
Rental Arrears from February to May 2022	\$3,400.00
Filing Fee for Landlord's Application	\$100.00
Less Tenant's Security Deposit	-\$425.00
<b>Total</b>	<b>\$3,075.00</b>

This Monetary Order must be served by the Landlord on the Tenant and may be enforced in Provincial 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: May 14, 2022

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Residential Tenancy Branch