



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR-DR, MNR-DR, MNDC, FF

### Introduction

This hearing convened as a result of the landlord's application for dispute resolution seeking remedy under the Residential Tenancy Act (Act) for an order of possession of the rental unit pursuant to a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (Notice) issued to the tenant, a monetary order for unpaid rent, and recovery of the cost of the filing fee.

This dispute began as an application made on March 11, 2022, via the non-participatory, ex-parte Direct Request process and was adjourned to a participatory hearing based on the Interim Decision by an adjudicator with the Residential Tenancy Branch (RTB), dated April 4, 2022, which is incorporated by reference and should be read in conjunction with this Decision.

At the participatory teleconference hearing, the landlord and tenant attended. The parties were affirmed, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the RTB Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Following is a summary of those submissions and includes only that which is relevant to the matters before me.

Preliminary and Procedural Matters-

The landlord, in the period of adjournment, filed an amended application seeking additional monetary compensation for utilities, additional unpaid monthly rent, and authority to keep the tenant's security deposit to use against a monetary award.

I decline to consider the landlord's amended claim for unpaid utility charges, as the dispute resolution proceeding had already begun on the original claim for unpaid monthly rent and an order of possession of the rental unit. I do not find it procedurally fair to allow an amendment to the existing claim for matters unrelated to unpaid monthly rent during the period of adjournment. However, I allow the landlord's amended claim for increased unpaid monthly rent owed as of the day of the hearing, as allowed by Rule 4.2.

Additionally, the landlord claimed for the June 2022 rent. I decline to consider the landlord's claim for the June 2022, monthly rent, as it was not yet due as of the day of the hearing. The landlord is at liberty to make that claim in a future dispute resolution application.

I dismiss the landlord's claim for unpaid utility charges, with leave to reapply.

The tenant submitted that she did not receive the full evidence package of the landlord. The landlord submitted that he placed all documents in an envelope and placed the same in the tenant's mailbox. The tenant confirmed that she did receive the landlord's application for dispute resolution and notice of hearing, but not the move-in condition inspection report (Report) and monetary order worksheet. The tenant confirmed receipt of the landlord's original application package for the Direct Request Process proceeding.

The landlord claimed all the evidence was included when served to the tenant.

I determined the tenant had received sufficient evidence to proceed on the matter.

As to the tenant's evidence, the tenant submitted that she served her evidence to the landlord on May 14, 2022, at the landlord's residence. The tenant submitted that she knocked on the door, but no one answered. The tenant said she then taped the evidence to the landlord's door and then later served the landlord by email.

Issue(s) to be Decided

Is the landlord entitled to an order of possession of the rental unit due to unpaid monthly rent owed under the written tenancy agreement?

Is the landlord entitled to an order of possession of the rental unit due to unpaid monthly rent and recovery of the cost of the filing fee?

Background and Evidence

The written tenancy agreement filed by the landlord shows that this tenancy began on February 3, 2022 , monthly rent is \$2,000, and the tenant paid the landlord a security deposit of \$1,000.

The landlord testified that on March 2, 2022, he serve the tenant with the 10 Day Notice, by attaching it to the tenant's door, listing unpaid rent of \$1,000, owed as of March 1, 2022. The effective vacancy date listed on the Notice was March 20, 2022. Filed in evidence was a copy of the Notice and a signed, witnessed proof of service of the Notice.

The landlord stated that the tenant did not vacate the rental unit and did not pay the amount listed on the Notice within 5 days. The landlord submitted that the tenant paid a partial payment of \$1,000 for April and no rent for May 2022, and as of the day of the hearing, the tenant owed the total amount of \$4,000 in unpaid monthly rent. For this reason, the landlord requests an order of possession of the rental unit and a monetary order for unpaid monthly rent and the filing fee.

***Tenant's response –***

The tenant submitted that she had an agreement with the landlord that the monthly rent would be reduced by \$1,000 due to the issues and condition of the rental unit. The

tenant submitted that landlord accepted the monthly rent of \$1,000 for March 2022, and that their agreement was shown in a text message communication between the parties.

The tenant submitted that the rental unit needed cleaning, painting, repairs and furniture removal and the tenant consistently referred to the rental unit as a “pig sty” in the text message communication, all of which I have reviewed. The text message communication shows many texts requesting repairs to the rental unit.

The tenant submitted that she has not paid the monthly rent for May 2022, although she has the ability to pay all the unpaid monthly rent in full, as the landlord promised to cancel the dispute resolution proceeding if she did and he has not done so.

In response to my inquiry, the tenant confirmed she has not filed an application for dispute resolution seeking repairs to the rental unit.

The landlord denied any agreement for a rent reduction and the text messages were pure fabrication.

### Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

### Order of Possession –

I have reviewed the 10 Day Notice and find it complies with the statutory requirements under section 52 of the Act as to form and content.

While acknowledging the tenant’s evidence that there may have been issues with the state of the rental unit, the only relevant issues before me are whether the Notice was served upon the tenant, whether rent was owed on the day the Notice was issued, and whether rent was paid within 5 days of receiving the Notice, or whether the tenant had authority to withhold the monthly rent, as claimed.

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement, whether or not the landlord complies with the Act, and is not permitted to withhold rent without the legal right to do so. A legal right may

include the landlord's consent for deduction; authorization from an Arbitrator or expenditures incurred to make an "emergency repair", as defined by the Act.

Pursuant to section 46(1) of the Act, when a tenant fails to pay rent when due, the landlord may serve the tenant with a 10 Day Notice for Unpaid Rent or Utilities. Upon receipt of the Notice, the tenant must pay the outstanding rent listed or file an application in dispute of the Notice within five (5) days.

The landlord submitted that they served the Notice to the tenant on March 2, 2022, by attaching the Notice to the tenant's door. While the tenant denied receiving the Notice, the landlord provided affirmed testimony that he attached the Notice on that date. The landlord also provided a signed, witnessed "Proof of Service Notice to End Tenancy and Written Demand to Pay Utilities", RTB form 34. The Proof of Service provided detailed information, which included the time of service.

While the tenant argued that she did not receive the 10 Day Notice, I find that between the landlord's testimony and the signed, witnessed Proof of Service, the landlord has proven on a balance of probabilities, in other words, that it is more likely than not, the landlord attached the Notice to the tenant's door on March 2, 2022, as claimed. Under section 90 of the Act, I find the tenant was deemed to have received the Notice on March 5, 2022. The tenant therefore had until March 10, 2022, to pay the outstanding rent in full or file an application in dispute of the Notice.

If the tenant believed she should not pay the monthly rent due to the condition of the rental unit, the tenant ought to have filed an application for dispute resolution seeking repairs to the rental unit and authority to withhold rent prior to doing so. Further, I have reviewed the text message communication filed by the tenant and find that they do not give the tenant authority to withhold rent and to continue to withhold rent, including the full rent due for May 2022. I was not provided dates on the text messages or the context, or proof that all text messages were provided.

I find the undisputed evidence is that the monthly rent deficiency of \$1,000 was owed at the time the 10 Day Notice was served, but not paid, at all, and there was no evidence before me that the tenant applied to dispute the Notice or had authority to withhold any monthly rent.

As I have found the tenant was deemed to have received the Notice on March 5, 2022, did not pay the outstanding monthly rent, or file an application for dispute resolution within 5 days, under section 46(5) of the Act, I find the tenant is conclusively presumed

to have accepted that the tenancy ended on the effective date of the Notice and must vacate the rental unit by that date, in this case, March 20, 2022.

I therefore order the tenancy ended on March 20, 2022. As a result, I find that the landlord is entitled to, and I grant, an order of possession of the rental unit pursuant to section 55(2) of the Act, effective two days after service of the order upon the tenant.

Should the tenant fail to vacate the rental unit pursuant to the terms of the order after being served, the order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court.

The tenant is cautioned that costs of such enforcement, **such as bailiff fees**, are subject to recovery from the tenant.

Monetary claim-

I find it reasonable that the landlord be allowed to amend their monetary claim in their application to account for further unpaid rent as the tenant has yet to vacate the rental unit.

I find that the landlord submitted sufficient to prove that the tenant owed \$2,000 each month under the terms of the written tenancy agreement, and failed to pay this amount in full for March, April and May 2022, leaving a total rent deficiency of \$4,000 for these months (\$1,000 for March 2022, \$1,000 for April 2022, and \$2,000 for May 2022).

I grant the landlord recovery of his filing fee of **\$100**, due to his successful application.

I find the landlord has established a monetary claim of **\$4,100**, for the unpaid monthly rent and the filing fee, as noted above.

I authorize the landlord to deduct the amount of the tenant's security deposit of \$1,000, which was his request, in partial satisfaction of his monetary award of \$4,100, pursuant to section 72(2)(b) of the Act. I grant the landlord a monetary order for the balance due pursuant to section 67 of the Act for the amount of **\$3,100**.

Should the tenant fail to pay the landlord this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia

(Small Claims) for enforcement as an Order of that Court. The tenant is cautioned that costs of such enforcement are subject to recovery from the tenant.

### Conclusion

The landlord's application for an order of possession of the rental unit and a monetary order for unpaid rent has been granted in the above terms.

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*. Pursuant to section 77 of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: May 31, 2022

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Residential Tenancy Branch