



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **OPR, MNRL-S, FFL**

### Introduction

This hearing 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;
- authorization to retain all or a portion of the tenant's security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing which lasted approximately 15 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The landlord attended and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

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

The landlord testified that they served the tenant with the notice of hearing and evidence personally in the presence of a witness on February 10, 2022. The landlord submitted signed Proof of Service form as evidence of service. Based on the evidence I find that the tenant was served with the landlord's materials on February 10, 2022, in accordance with sections 88 and 89 of the *Act*, and in any event has been sufficiently served pursuant to section 71.

At the outset of the hearing the landlord withdrew the monetary components of their claim and stated they are solely seeking an order of possession.

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

### 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 landlord gave undisputed evidence on the following facts. The monthly rent for this periodic tenancy is \$950.00 payable on the first of each month. The tenant failed to pay rent as required on January 1, 2022 and the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent dated January 14, 2022. The notice was served in person on the tenant on that date in the presence of a witness. Copies of the 10 Day Notice and the signed Proof of Service form were submitted into evidence.

The tenant did not dispute the notice nor did they pay the full amount of the arrear within 5 days of service of the 10 Day Notice. The tenant made a payment of \$940.00 on January 30, 2022. The landlord issued a written receipt and indicated that the payment was accepted for use and occupancy and did not reinstate the tenancy.

### Analysis

The landlord provided undisputed evidence at this hearing, as the tenant did not attend. I find that the tenant was obligated to pay the monthly rent in the amount of \$950.00 pursuant to the signed tenancy agreement. I accept the evidence before me that the tenant failed to pay the full rent on January 1, 2022 and there was a basis for the landlord to issue a 10 Day Notice. In accordance with sections 88 of the Act I find that the tenant was duly served with the 10 Day Notice on January 14, 2022.

I find the 10 Day Notice conforms to the form and content requirement of the Act as it clearly indicates the rental unit address, identifies the parties, is signed and dated and provides the reason for the tenancy to end.

I accept the landlord's evidence that the tenant did not pay the full amount of rent due within the 5 days of service granted under section 46(4) of the *Act* nor did they file an application to dispute the notice. I accept the landlord's evidence that any subsequent payments were clearly indicated to the tenant to be for use and occupancy and did not reinstate the tenancy. Therefore, I find that the landlord is entitled to an Order of Possession, pursuant to section 55 of the *Act*. As the effective date of the notice has passed, I issue an order enforceable 2 days after service on the tenant.

### Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenant or any occupant 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.

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 3, 2022

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Residential Tenancy Branch