



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNRL, FFL

### Introduction

This hearing was convened by way of conference call concerning an application made by the landlord seeking an Order of Possession and a monetary order for unpaid rent or utilities and to recover the filing fee from the tenant for the cost of the application.

The landlord attended the hearing accompanied by his son who acted as the landlord's agent. The landlord's agent gave affirmed testimony. However, the line remained open while the telephone system was monitored for 10 minutes prior to hearing any testimony and no one for the tenant joined the call.

The landlord's agent testified that the tenant was served with the Notice of Dispute Resolution Proceeding (the Hearing Package), along with all of the landlord's evidentiary material by Express Post on April 30, 2022. The landlord has provided a Canada Post cash register receipt bearing that date as well as a photograph of the Express Post ticket containing a tracking number. I am satisfied that the tenant has been served in accordance with the *Residential Tenancy Act*.

All evidence of the landlord has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

- Has the landlord established that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was issued in accordance with the *Residential Tenancy Act*?
- Has the landlord established a monetary claim as against the tenant for unpaid rent?

### Background and Evidence

**The landlord's agent** testified that this month-to-month tenancy began on January 14, 2014 and the tenant still resides in the rental unit. Rent in the amount of \$850.00 is payable on the 1<sup>st</sup> day of each month, and the landlord collected a pro-rated amount for the first partial month of the tenancy. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$425.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a suite in a duplex, and both suites are rented by the landlord. A copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord's agent further testified that the tenant is currently in arrears of rent the sum of \$4,400.00, including rent owed for May, 2022.

The landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, and a copy has been provided for this hearing. It is an old version of the approved form under the *Act*, and contains several dates of issue: January 12, 2022 which is crossed off and initialed; March 5, 2022 which is crossed off and initialed; and April 4, 2022 which is initialed. It also contains several effective dates of vacancy: January 12, 2022 which is crossed off and initialed; March 5, 2022 which is crossed off and initialed; and April 4, 2022 which is initialed. The second page of the document states that the tenant failed to pay rent in the amount of \$3,550.00 that was due on April 1, 2022. The landlord served the same form 3 times, changing page 2 only on each occasion, so that the landlord would not have to fill in the first page again each time.

The tenant was never at home when the landlord attended to serve the Notices, so the landlord gave them to the neighbouring tenant to serve, who gave them personally to the tenant.

The tenant has not served the landlord with an Application for Dispute Resolution disputing any of the notices to end the tenancy.

The landlord has also provided a copy of a bank statement with highlighted circles around the rent payments made by the tenant. It shows that the tenant made the following payments:

- July 7, 2021 \$800.00;
- August 9, 2021 \$800.00;
- September 8, 2021 \$500.00;
- October 13, 2021 \$200.00;

- October 18, 2021 \$350.00;
- October 21, 2021 \$1,100.00;
- January 20, 2022 \$1,000.00;
- February 2, 2022 \$300.00.

The landlord's agent testified that up to November, 2021 the tenant was pretty much up-to-date. The January 20, 2022 payment of \$1,000.00 was made after the landlord served the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on January 12, 2022. No rent has been paid by the tenant since February 2, 2022.

### Analysis

Firstly, the *Residential Tenancy Act* states that any notice to end a tenancy given by a landlord must be in the approved form. I find that using an older version, crossing out dates and re-using the same form 3 times is contrary to the law. Further, I am not satisfied that the tenant was served with any of the forms. Therefore, I dismiss the landlord's application for an Order of Possession. The landlord may issue another notice to end the tenancy if rent remains unpaid.

I have reviewed the bank statement provided by the landlord, and I find as follows:

Date Due	Amount Due	Date Paid	Amount Paid	Balance Due
July 1, 2021	\$850.00	July 7, 2021	\$800.00	\$50.00
August 1, 2021	\$850.00	August 9, 2021	\$800.00	\$100.00
September 1, 2021	\$850.00	September 8, 2021	\$500.00	\$450.00
October 1, 2021	\$850.00	October 13, 2021	\$200.00	\$1,100.00
		October 18, 2021	\$350.00	\$750.00
		October 21, 2021	\$1,100.00	(\$350.00)

November 1, 2021	\$850.00		\$0	\$500.00
December 1, 2021	\$850.00		\$0	\$1,350.00
January 1, 2022	\$850.00	January 20, 2022	\$1,000.00	\$1,200.00
February 1, 2022	\$850.00	February 2, 2022	\$300.00	\$1,750.00
March 1, 2022	\$850.00		\$0	\$2,600.00
April 1, 2022	\$850.00		\$0	\$3,450.00
May 1, 2022	\$850.00		\$0	\$4,300.00

Having reviewed the evidence of the landlord, I find that the tenant is currently in arrears of rent the sum of \$4,300.00, and the landlord is entitled to a monetary order in that amount. The landlord must serve the monetary order upon the tenant, and if the tenant does not pay within a reasonable time, the landlord may file the monetary order for enforcement in the Provincial Court of British Columbia, Small Claims division as a judgment.

Since the landlord has been partially successful with the application the landlord is also entitled to recovery of the \$100.00 filing fee.

### Conclusion

For the reasons set out above, the landlord's application for an Order of Possession is hereby dismissed.

I hereby grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$4,400.00.

This order is final and binding and may be enforced.

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 27, 2022

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Residential Tenancy Branch