



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

OPR-DR, MNR-DR, FFL

### **Introduction**

This hearing was initiated by way of a Direct Request Proceeding but was adjourned to this participatory hearing by the Adjudicator who initially considered the Application for Dispute Resolution.

This participatory hearing was convened to consider the Landlord's application for an Order of Possession, for a monetary Order for unpaid rent, and to recover the fee for filing this Application for Dispute Resolution.

The Landlord stated that on March 22, 2022 the Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch on March 19, 2022 were sent to the Tenant, at the rental unit, via registered mail. The Landlord submitted Canada Post documentation that corroborates this statement. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)* and the evidence was accepted as evidence for these proceedings.

The Landlord stated that on April 13, 2022 notice of this hearing and evidence submitted to the Residential Tenancy Branch on April 12, 2022 were sent to the Tenant at the rental unit, via registered mail. The Landlord submitted Canada Post documentation that corroborates this statement. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)* and the evidence was accepted as evidence for these proceedings.

The Landlord was given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The Landlord affirmed that he would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The Landlord was advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. The Landlord affirmed that he would not record any portion of these proceedings.

### Issue(s) to be Decided

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

### Background and Evidence

The Landlord stated that:

- this tenancy began on August 15, 2020;
- the Tenant is required to pay monthly rent of \$2,000.00;
- effective October 01, 2020 and every month thereafter, the rent was due by the first day of each month;
- rent has not been paid for March of 2022;
- a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities was served to the Tenant on March 01, 2022.

The Landlord submitted a Proof of Service that declares the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities was posted on the Tenant's door on March 01, 2022 and that a copy was also placed in the Tenant's mailbox on the same date.

### Analysis

Section 26(1) of the *Act* requires tenants to pay rent to their landlord. On the basis of the undisputed evidence, I find that the Tenant has not paid any rent for March of 2022 and, as such, I find the Landlord is entitled to \$2,000.00 in rent for that month.

Section 46(1) of the *Act* allows a landlord to 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.

On the basis of the undisputed evidence, I find that the Landlord served the Tenant with a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities on March 01, 2022 because rent that was due on March 01, 2022 had not been paid. As rent was not due until the end of the day on March 01, 2022, I find that the Landlord did not have the right to serve the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities until March 02, 2022, which is when the rent became overdue.

As the Landlord served the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities prior to the rent being overdue, I find that the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities is not enforceable. As such, the Landlord's application for an Order of Possession on the basis of this Ten Day Notice to End Tenancy for Unpaid Rent or Utilities is dismissed, without leave to reapply.

The Landlord retains the right to serve the Tenant with another Ten Day Notice to End Tenancy for Unpaid Rent or Utilities if rent remains unpaid.

The Landlord also has the right to determine that the rental unit has been abandoned, in which case an Order of Possession is not required. The Residential Tenancy Branch suggests that a landlord could consider a rental unit abandoned if the rent remains unpaid for at least one month and one of the following applies:

- The tenant removed their possessions from the building;
- The tenant has told the landlord that they do not intend to return; or
- The landlord has a reasonable expectation that the tenant will not return.

I find that the Application for Dispute Resolution has merit and that the Landlord is entitled to recover the fee for filing this Application for Dispute Resolution.

### Conclusion

The Landlord has established a monetary claim, in the amount of \$2,100.00, which includes \$2,000.00 in unpaid rent for March of 2022 and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution. I therefore grant the Landlord a monetary Order for \$2,200.00. In the event the Tenant does not voluntarily

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.

Pursuant to section 72(2)(a) of the *Act*, the Landlord has the right to apply any security or pet damage deposit paid by the Tenant to the monetary Order awarded here.

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: June 27, 2022

---

Residential Tenancy Branch