



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PLAN A REAL ESTATE SERVICES LTD. and  
{TENANT NAME SUPPRESSED TO PROTECT PRIVACY}

## **DECISION**

Dispute Codes      OPR-DR, MNR-DR, FFL

### Introduction

This hearing originated as a Direct Request proceeding and was adjourned to a participatory hearing in an Interim Decision dated March 16, 2022. This Decision should be read in conjunction with the Interim Decision. This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent, pursuant to sections 46 and 55;
- a Monetary Order for unpaid rent, pursuant to sections 26 and 67; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 1:40 p.m. in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 p.m. The landlord's agent attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. The agent called her assistant as a witness. The witness affirmed to tell the truth.

The agent was advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. The agent testified that she was not recording this dispute resolution hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

The Interim Decision states:

Notices of Reconvened Hearing are enclosed with this interim decision. The applicant must serve the Notice of Reconvened Hearing, the interim decision, and all other required documents, upon the tenant within three (3) days of receiving this decision in accordance with section 89 of the Act.

The agent testified that the above documents were posted on the tenant's door on March 17, 2022. The witness testified that she witnessed the agent post the above documents on the tenant's door on March 17, 2022. Based on the testimony of the agent and the agent's assistant, I find that the tenant was served with the above documents in accordance with section 89(2) of the Act.

Section 89 of the Act states:

**89** (1)An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:

- (a)by leaving a copy with the person;
- (b)if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c)by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d)if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
- (e)as ordered by the director under section 71 (1) *[director's orders: delivery and service of documents]*;
- (f)by any other means of service provided for in the regulations.

(2)An application by a landlord under section 55 *[order of possession for the landlord]*, 56 *[application for order ending tenancy early]* or 56.1 *[order of possession: tenancy frustrated]* must be given to the tenant in one of the following ways:

- (a)by leaving a copy with the tenant;
- (b)by sending a copy by registered mail to the address at which the tenant resides;

- (c)by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant;
- (d)by attaching a copy to a door or other conspicuous place at the address at which the tenant resides;
- (e)as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*];
- (f)by any other means of service provided for in the regulations.

I find that the landlord was permitted to service their Notice of Reconvened Hearing documents pertaining to their section 55 claim for an order of possession, via posting, as set out in section 89(2) of the *Act*. However, I find that for monetary claims, posting is not a valid method of service as section 89(1) of the *Act* applies to monetary claims and posting is not permitted under section 89(1) of the *Act*.

Since the landlord's monetary claim for unpaid rent was not served correctly, I dismiss this claim with leave to reapply.

#### Issues to be Decided

1. Is the landlord entitled to an Order of Possession for unpaid rent, pursuant to sections 46 and 55 of the *Act*?
2. Is the landlord entitled to recover the filing fee from the tenant, pursuant to section 72 of the *Act*?

#### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the agent, not all details of the agent's submissions and arguments are reproduced here. The relevant and important aspects of the agent's claims and my findings are set out below.

The agent testified that this tenancy began on August 1, 2021 and is currently ongoing. The agent testified that the parties signed a new tenancy agreement effective January 1, 2022, which was entered into evidence. The tenancy agreement does not state the day in the month that rent is due. The agent testified that rent is due on the first day of each month and that the omission of the day in the month that rent is due was an accidental omission. The agent testified that monthly rent in the amount of \$3,500.00 is

payable on the first day of each month. The agent testified that a security deposit of \$1,750.00 was paid by the tenant to the landlord.

The agent testified that a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") was posted on the tenant's door on January 12, 2022. The agent entered into evidence a witnessed proof of service document stating same. The tenant did not file an application with the Residential Tenancy Branch seeking to cancel the Notice.

The Notice is in writing and:

- is signed and dated by the agent,
- gives the address of the rental unit,
- states the effective date of the Notice as January 23, 2022,
- states the ground for ending the tenancy is the tenant's failure to pay \$3,500.00 in rent due on January 1, 2022, and
- is in the approved form, RTB Form # 30.

The agent testified that the tenant was served with the Notice because he did not pay January 2022's rent and has not paid any rent since the Notice was served. The agent testified that the tenant owes six months' rent from January to June 2022.

### Analysis

Based on the agent's testimony and the witnessed proof of service document entered into evidence, I find that the tenant was deemed served with the Notice on January 15, 2022, three days after its posting, in accordance with section 88 and 90 of the *Act*.

Section 53(2) of the *Act* states that if the effective date stated in a notice to end tenancy is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section. The earliest date permitted under section 46(1) of the *Act* is January 25, 2022. I find that the corrected effective date of the Notice is January 25, 2022.

Upon review of the Notice I find that it meets the form and content requirements of section 52 of the *Act*.

Based on the undisputed testimony of the agent, I find that the tenant failed to pay the outstanding rent within five days of receiving the Notice. The tenant has not made application pursuant to section 46(4) of the *Act* within five days of receiving the Notice. In accordance with section 46(5) of the *Act*, the tenant's failure to take either of these

actions within five days led to the end of his tenancy on the corrected effective date of the notice.

In this case, this required the tenant to vacate the premises by January 25, 2022, as that has not occurred, I find that the landlord is entitled to a 2-day Order of Possession in accordance with section 55(2)(b) of the *Act*. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

As the landlord was successful in their application, I find that the landlord is entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

Section 72(2) of the *Act* states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I find that the landlord is entitled to retain \$100.00 from the tenant's security deposit.

### Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service on the tenant**. Should the tenant 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: June 24, 2022

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Residential Tenancy Branch