



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 1291003 BC LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR MNR MNSD FF

### Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution. A participatory hearing was held on June 23, 2022. The landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession for unpaid rent or utilities; and,
- a monetary order for unpaid rent or utilities.

The landlord's agent (the agent) attended the hearing and provided affirmed testimony. The tenant did not attend the hearing. The agent testified that he sent the Notice of Dispute Resolution Proceeding, along with his supporting evidence to each of the tenants on March 17, 2022, by registered mail. Proof of mailing was provided. I find the tenants are deemed to have received these packages on March 22, 2022, the fifth day after their registered mailing, pursuant to Section 90 of the *Act*.

The agent has requested to amend his application to include rent that has accrued since the original application date. I turn to the following Rules of Procedure (4.2):

### **Amending an application at the hearing**

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

Further, the agent requested to amend his application to allow him to retain the security deposit to offset rent owed. In consideration of these requests, I hereby amend the agent's application accordingly.

The agent was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Issue(s) to be Decided

1. Is the landlord entitled to an order of possession for unpaid rent or utilities?
2. Is the landlord entitled to a monetary order for unpaid rent or utilities?
3. Is the landlord authorized to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38?
4. Is the landlord entitled to recover the filing fee from the tenant for the cost of this application?

#### Background and Evidence

The agent provided a copy of the tenancy agreement between the parties into evidence. Monthly rent is set at \$1,421.00 and is due on the first of the month. The agent holds a security deposit of \$700.00 and a pet deposit of \$700.00.

The agent provided a copy of the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice), which was sent to each of the Tenants by registered mail on February 16, 2022. Proof of mailing was provided. The 10 day Notice specified that the tenants owed \$1,421.00 in rent at that time.

The agent stated that the 10 Day Notice was issued because February rent was unpaid, but no rent has been paid since that time, and the Tenants now owe rent for February, March, April, May, and June (5 x \$1,421.00 = \$7,105.00).

#### Analysis

Based on the unchallenged affirmed testimony and documentary evidence, and on a balance of probabilities, I find as follows:

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent. When a tenant does not pay rent when due, section 46(1) of the *Act* permits a landlord to end the tenancy by issuing a notice to end tenancy. A tenant who receives a notice to end tenancy under

this section has five days after receipt, under section 46(4) of the *Act*, to either pay rent in full or dispute the notice by filing an application for dispute resolution. When a tenant does not pay rent in full or dispute the notice, the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice, as per section 46(5) of the *Act*.

In this case, I find that the tenants had a balance of unpaid rent at the time the 10 Day Notice was issued. Pursuant to section 90 of the *Act*, I find the Tenants are deemed to have received the 10 Day Notice on February 21, 2022, 5 days after it was mailed.

The tenants had 5 days to pay rent in full or file an application for dispute resolution. I find no evidence that the tenants did either. As such, I find the tenants are conclusively presumed to have accepted the end of the tenancy, on the effective date of the notice. The agent is entitled to an order of possession, which will be effective two (2) days after it is served on the tenants.

With respect to the agent's request for a monetary order for unpaid rent, I find there is sufficient evidence to demonstrate that the tenants owe and have failed to pay rent for February through June 2022, as summarized above. I find this amounts to unpaid rent in the amount of \$7,105.00.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the agent was substantially successful in this hearing, I order the tenants to repay the \$100. Also, pursuant to sections 72 of the *Act*, I authorize that the security/pet deposit, currently held by the agent, be kept and used to offset the amount of rent still owed by the tenants. In summary, I grant the monetary order based on the following:

<b>Claim</b>	<b>Amount</b>
Cumulative unpaid rent	\$7,105.00
Other:	
Filing fee	\$100.00
<b>Less:</b>	
Security/Pet Deposit currently held by Agent	(\$1,400.00)
<b>TOTAL:</b>	<b>\$5,805.00</b>

Conclusion

The landlord is granted an order of possession effective **two days after service** on the tenant. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

The landlord is granted a monetary order pursuant to Section 67 in the amount of **\$5,805.00**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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 23, 2022

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Residential Tenancy Branch