



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR-DR OPM MNRL-S MNDL-S FFL

### Introduction

This hearing dealt with two landlord Applications for Dispute Resolution (applications) seeking remedy under the *Residential Tenancy Act* (Act) to obtain an order of possession for an undisputed 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated April 2, 2022 (10 Day Notice), for an order of possession based on a Mutual Agreement to End Tenancy (Mutual Agreement) for a monetary order for unpaid rent or utilities, for authorization to retain all or part of the security deposit, for damages to the unit, site or property, and to recover the cost of two filing fees.

The landlord, an advocate for the landlord, DS (advocate) and the tenant appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their documentary evidence and testimony. A summary of the testimony and documentary evidence is provided below and includes only that which is relevant to the hearing. Words utilizing the singular shall also include the plural and vice versa where the context requires.

The tenant confirmed that they received the documentary evidence from the landlord and had the opportunity to review that evidence prior to the hearing. In addition, the tenant confirmed that they did not serve any documentary evidence as they claimed they did not know how. The tenant was advised that all of that information was provided in the documents served on them by the landlord. I find the tenant was sufficiently served in accordance with the Act.

### Preliminary and Procedural Matters

As the tenant continues to occupy the rental unit as of the date of the hearing, I find the landlord's claim for damages is premature.

As a result of the above, I dismiss the damages claim with leave to reapply. In addition, both parties confirmed their respective mailing addresses during the hearing. The decision will be emailed to both parties as a result.

### Issues to be Decided

- Is the landlord entitled to an order of possession for unpaid rent or utilities or based on a mutual agreement between the parties?
- Is the landlord entitled to a monetary order for unpaid rent or utilities, and if so, in what amount?
- Is the landlord entitled to both filing fees under the Act?

### Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A one-year fixed-term tenancy began on June 10, 2017 and converted to a month-to-month tenancy after June 10, 2018. Although the tenancy agreement, states May 31, 2018, I find the one-year date would be June 10, 2018 under the Act.

Monthly rent in the amount of \$1,550.00 was due on the first day of each month and was subsequently increased over the course of the tenancy to the current monthly rent of \$1,573.25 as of January 1, 2022. The tenant paid a security deposit of \$775.00 at the start of the tenancy which the landlord continues to hold.

The landlord confirmed service of the 10 Day Notice for Unpaid Rent or Utilities (the “10 Day Notice”) dated April 8, 2013, by posting on the tenant’s door on April 8, 2013 with an effective date of April 18, 2013, which was witnessed by her husband. The tenant did not dispute the 10 Day Notice and did not pay the full amount of rent owed within five days of receiving the 10 Day Notice.

The landlord submitted two different documents in terms of ending the tenancy. The first was a Mutual Agreement where both parties signed that the tenant would vacate the rental unit on February 28, 2022 at 6:00 p.m. and as part of that Mutual Agreement, the tenant would not be charged February 2022 rent and at the outgoing Condition Inspection the tenant would be compensated an additional \$3,100.00. The tenant failed to vacate the rental unit and continues to occupy the rental unit as of the hearing date, June 13, 2022.

The landlord also presented a 10 Day Notice dated April 2, 2022 and indicated that \$1,573.25 was owed as of April 1, 2022 and the effective vacancy date is listed as April 15, 2022. The tenant affirmed that they were served with the 10 Day Notice on April 3, 2022 and did not pay April rent for 2022. The tenant claims they did not pay April 2022 rent due to the Mutual Agreement. The tenant did not file an application to dispute the 10 Day Notice.

The tenant and the landlord both confirmed the following facts:

1. February 2022 rent was not paid.
2. March 2022 rent was paid of \$1,573.25.
3. April and May 2022 rent was not paid.
4. June 2022 rent was paid of \$1,600.00, **which was an overpayment of \$26.75.**

The landlord's position is that the Mutual Agreement is now void as the tenant failed to comply with the Mutual Agreement by refusing to vacate. The tenant stated that they did not read the yellow highlighted portion of the Mutual Agreement, which states:

**NOTE:** This form is NOT a Notice to End Tenancy. Neither a Landlord nor a Tenant is under any obligation to sign this form. By signing this form, both parties understand and agree the tenancy will end with no further obligation between landlord(s) or tenant(s). If you are the tenant, this may include foregoing any compensation you may be due if you were served a Notice to End Tenancy. If you have questions about tenant or landlord rights and responsibilities under the Residential Tenancy Act or the Manufactured Home Part Tenancy Act, contact the Residential Tenancy Branch using the information provided at the bottom of this form before you sign.

**This is a Mutual Agreement between the Landlord and Tenant**

The tenant was told that before signing any contract, due diligence requires that all wording is read before signing a contract. The tenant stated that they expect to be paid the compensation owed to them before they vacated and could vacate because they were required to quarantine at the time they were supposed to vacate. The tenant provided no documentary evidence such as a COVID test result to support that they were required to quarantine.

During the hearing, the landlord confirmed that they do not wish to offset any amount owing with the security deposit as the tenant has not vacated the rental unit and as such, has not provided a written forwarding address yet.

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Regarding the Mutual Agreement, I find the tenant breached the Mutual Agreement first by failing to vacate the rental unit on February 28, 2022 at 6:00 p.m. and that by doing so the tenant is not entitled to any compensation under the Mutual Agreement. I set aside the Mutual Agreement of the parties due to the breach by the tenant pursuant to section 62(3) of the Act. Therefore, I find the tenant owes February 2022 rent of \$1,573.25 **less the June 2022 overpayment of \$26.75 noted above, the balance owing of \$1,546.50** pursuant to section 26 of the Act that requires that rent for February 2022 be paid on February 1, 2022.

As the tenant confirmed they were served with the 10 Day Notice and did not apply to dispute the 10 Day Notice or pay April 2022 rent, I find the tenancy ended on **April 15, 2022**, which was the effective vacancy date listed on the 10 Day Notice. The tenant is conclusively presumed pursuant to section 46 of the Act, to have accepted that the tenancy ended on the effective vacancy date listed on the 10 Day Notice. The tenant continues to occupy the rental unit. Therefore, pursuant to section 46 of the Act, I find the landlord is entitled to an Order of Possession effective **June 30, 2022 at 1:00 p.m.** I have used this date as the tenant has paid money for use and occupancy for June 2022.

As the tenant admitted to not paying April or May 2022 rent either, I find the tenant breached section 26 of the Act for both of those months and owes the landlord **\$1,573.25 for April 2022 and \$1,573.25 for May 2022.**

As the landlord has succeeded with their applications, **I grant** the landlord the recovery of both filing fees in the amount of **\$200.00** pursuant to section 72 of the Act.

**Monetary Order** – I find that the landlord is entitled to a monetary order as follows:

Unpaid February 2022 rent (after June 2022 overpayment of \$26.75 applied)	\$1,546.50
Unpaid April 2022 rent	\$1,573.25
Unpaid May 2022 rent	\$1,573.25
Filing fees	\$200.00



<b>TOTAL</b>	<b>\$4,893.00</b>
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I CAUTION the tenant to comply with any future signed Mutual Agreement and not to breach section 26 of the Act in the future.

### Conclusion

The landlords' claims have merit. The tenancy ended April 15, 2022.

The landlord is granted an order of possession effective **June 30, 2022 at 1:00 p.m.** This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia. The tenant can be held liable for all costs related to enforcing the order of possession.

The landlord has established a total monetary claim of **\$4,893.00** as indicated above. The landlord is granted a monetary order under section 67 in that amount. The landlord must serve the tenant with the monetary order and then it may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The tenant can be held liable for all costs related to enforcing the monetary order.

This decision will be emailed to both parties. The order of possession and monetary order will be emailed to the landlord only for service on the tenant.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 13, 2022

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Residential Tenancy Branch