



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PENINSULA and [tenant  
name suppressed to personal privacy]

## **DECISION**

Dispute codes      MNR-DR, OPR-DR

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- an order of possession for unpaid rent and utilities pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to recover the filing fee for this application pursuant to section 72.

This application was originally heard by way of a Direct Request Proceeding and on June 9, 2022, an interim decision was issued adjourning the application to be reconvened at a participatory hearing.

The hearing was conducted by conference call. The tenant did not attend this hearing, although I waited until 11:15 a.m. to enable the tenant to connect with this teleconference hearing scheduled for 11:00 a.m. The landlord attended the hearing and was given a full opportunity to provide affirmed testimony, present evidence and make submissions.

The landlord testified that on June 14, 2022, she personally served the tenant with a copy of the Application for Dispute Resolution including the Notice of Hearing and Interim Decision. The landlord was concerned she may have missed the deadline to serve so she also subsequently filed a second application which was joined to his hearing. The subject matter of both applications is the same. The landlord served the tenant with the second application by registered mail on July 6, 2022. The landlord provided a registered mail receipt and tracking number in support of service.

Based on the above evidence, I am satisfied that the tenant was served with the original Application for Dispute Resolution, Notice of Hearing and Interim Decision and the secondary Application for Dispute Resolution pursuant to sections 89 & 90 of the Act. The hearing proceeded in the absence of the tenant.

### Preliminary Issue – Amendment to Landlord's Application

Paragraph 64(3)(c) of the Act allows me to amend an application for dispute resolution.

At the hearing, the landlord testified that the tenant had not yet vacated the rental unit and therefore asked to amend her claim to include outstanding rent for the month of July 2022. Although the tenant did not have prior notice of this claim, I find that the tenant should reasonably have known that the landlord would suffer this loss if the tenant neither paid rent nor vacated the rental unit. I therefore allowed the landlord's request for an amendment. The landlord also requested to amend the landlord name in the first application to match the name reflected on the secondary application.

### Issues

Is the landlord entitled to an order of possession pursuant to a 10 Day Notice to End Tenancy for unpaid rent (the 10 Day Notice)?

Is the landlord entitled to a monetary award for unpaid rent and recovery of the filing fee?

### Background and Evidence

The tenancy began on March 1, 2018. The current monthly rent is \$1115.00 payable on the 1<sup>st</sup> day of each month. The tenant paid a security deposit of \$560.00 at the start of the tenancy which the landlord continues to hold.

The landlord submitted a copy of a 10 Day Notice dated March 14, 2022. The 10 Day Notice indicates an outstanding rent amount of \$7395.00 which was due on March 1, 2022. The 10 Day Notice provides that the tenant had five days from the date of service to pay the outstanding rent in full or apply for Dispute Resolution or the tenancy would end on the stated effective date of the Notice.

The landlord testified that on March 14, 2022, the tenant was served with the 10 Day Notice by placing a copy in the mail slot of the rental unit. A witnessed proof of service of the 10 Day Notice was provided with the application.

The landlord testified the outstanding rent was not paid within 5 days and no rent has been paid by the tenant since.

The landlord's amended monetary claim is \$10,365.00 which includes outstanding rent to date including July 2022 and applicable NSF fees. The landlord submitted a tenant account ledger in support of the outstanding rent amount.

### Analysis

Section 46 of the Act requires that upon receipt of a 10 Day Notice the tenant must, within five days, either pay the full amount of the arrears indicated on the 10 Day Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If, as in the present case, the tenant does neither of these two things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the 10 Day Notice, March 30, 2022.

I am satisfied that the tenant was deemed served with the 10 Day Notice on March 17, 2022, three days after depositing in the mail slot, pursuant to sections 88 & 90 of the Act. The tenant would have had until March 22, 2022 to pay the outstanding amount as per the 10 Day Notice which they failed to do.

I find that the 10 Day Notice issued by the landlord complies with the requirements of Section 52 of the Act, accordingly, the landlord is granted an Order of Possession pursuant to section 55 of the Act.

Section 26 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I accept the landlord's uncontested evidence and claim for outstanding rent and NSF fees of \$10,365.00. The landlord is awarded the filing fee for only one of these applications for a total monetary award of \$10,465.00.

The landlord continues to hold a security deposit of \$560.00. I allow the landlord to retain the security deposit in partial satisfaction of the monetary award pursuant to section 72 of the Act.

Therefore, I find that the landlord is entitled to a Monetary Order in the amount of \$9,905.00.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I grant the landlord a Monetary Order in the amount of \$9,905.00. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and 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: July 15, 2022

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Residential Tenancy Branch