



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      FFL, OPR, MNRL

### Introduction

The Landlord seeks the following relief under the *Residential Tenancy Act* (the “Act”):

- An order of possession under s. 55 after issuing a 10-Day Notice to End Tenancy signed on February 23, 2022 (the “10-Day Notice”);
- An order for unpaid rent under s. 67; and
- Return of its filing fee under s. 72.

G.S. and G.S. appeared as the Landlord’s agents. The Tenant did not attend, nor did someone attend on their behalf.

Pursuant to Rule 7.1 of the Rules of Procedure, the hearing began as scheduled in the Notice of Dispute Resolution. As the Tenant did not attend, the hearing was conducted in their absence as permitted by Rule 7.3 of the Rules of Procedure.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Landlord’s agent advised that the 10-Day Notice was personally delivered to the Tenant on February 23, 2022. I find that the 10-Day Notice was served in accordance with s. 88 of the *Act* and was received by the Tenant on February 23, 2022.

The Landlord’s agent further advised that the Notice of Dispute Resolution and evidence for the application was served via registered mail sent on March 31, 2022 and personally delivered to the Tenant on June 23, 2022. I find that the Landlord served its application materials in accordance with s. 89 of the *Act* by sending it via registered mail

on March 31, 2022. Pursuant to s. 90 of the *Act*, I deem that the Tenant received the application materials on April 5, 2022. I am further satisfied based on the undisputed testimony of the Landlord's agent that the Tenant was personally served on June 23, 2022.

#### Preliminary Issue – Amending the Landlord's Claim

At the hearing, the Landlord's agent confirmed that the Landlord was seeking unpaid rent for those months that have passed since filing their application.

Rule 4.2 of the Rules of Procedure permits amendments at the hearing in circumstances that can be reasonably anticipated. As an example, Rule 4.2 states this includes instances where the amount of rent owed has increased since the time the application was made and the hearing taking place.

I find that the increased rent claim could be reasonably anticipated and amend the Landlord's claim pursuant to Rule 4.2 such that it can seek the additional amount.

#### Issues to be Decided

- 1) Is the Landlord entitled to an order of possession?
- 2) Is the Landlord entitled to an order for unpaid rent?
- 3) Is the Landlord entitled to the return of its filing fee?

#### Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

The Landlord's agent confirmed the following details with respect to the tenancy:

- The Tenant took occupancy of the rental unit on May 31, 2019.
- Rent of \$1,000.00 is due on the first day of each month.
- The Landlord holds a security deposit of \$475.00 in trust for the Tenant.

I am told that there is a written tenancy agreement, though the Landlord failed to provide one in its evidence.

The Landlord's agent advised that the 10-Day Notice was issued as the Tenant had failed to pay rent for October 2021, November 2021, December 2021, January 2022, and February 2022. The 10-Day Notice was issued on the basis that the Tenant failed to pay rent in the amount of \$5,000.00. A copy of the 10-Day Notice was put into evidence by the Landlord.

The Landlord's agent testified that the Tenant continues to reside within the rental unit. The Landlord's agent denied that the Landlord received notice from the Tenant disputing the 10-Day Notice.

The Landlord's agent further advised that the Tenant did make rent payments of \$1,000.00 in May 2022 and \$1,000.00 in July 2022. However, I am told that the Tenant failed to pay rent for March, April, and June 2022. The Landlord seeks unpaid rent in the amount of \$8,000.00.

The Landlord's agent testified that under the tenancy agreement the Tenant is to pay electrical utilities. The Landlord provided a series of letters from the utility providing stating that the Tenant was in arrears on their account. The Landlord's agent indicates that the Landlord has not paid the overdue account.

### Analysis

The Landlord seeks an order of possession and order for unpaid rent after issuing a 10-Day Notice.

Pursuant to s. 46(1) of the *Act*, where a tenant fails to pay rent when it is due, a landlord may elect to end the tenancy by issuing a notice to end tenancy that is effective no sooner than 10-days after it is received by the tenant.

I have reviewed the 10-Day Notice and find that it complies with the formal requirements of s. 52 of the *Act*. It is signed and dated by the Landlord, states the address for the rental unit, states the correct effective date, sets out the grounds for ending the tenancy, and is in the approved form (RTB-30).

When a 10-Day Notice to End Tenancy issued under s. 46 of the *Act* is received by a tenant, a tenant must, within 5-days, either pay the overdue rent or dispute the notice with the Residential Tenancy Branch. This is made clear at the very top of the 10-Day Notice to End Tenancy, which states:

### HOW TO DISPUTE THIS NOTICE

You have **5 days** to pay rent and/or utilities to the landlord or file an Application for Dispute Resolution with the Residential Tenancy Branch online, in person at any Service BC Office or by going to the Residential Tenancy Branch Office at #400 - 5021 Kingsway in Burnaby. If you do not apply within the required time limit, you are presumed to accept that the tenancy is ending and must move out of the rental unit by the effective date of this Notice.

In this case, the Tenant did neither. Given this, s. 46(5) comes into effect and the Tenant is conclusively presumed to have accepted the end of the tenancy and must vacate the rental unit on the effective date. In this case, the effective date is March 5, 2022, as stated in the 10-Day Notice.

As the Tenant continues to reside within the rental unit and the 10-Day Notice complies with s. 52, I find that the Landlord is entitled to an order of possession under s. 55 of the *Act*. The Tenant shall provide vacant possession of the rental unit to the Landlord within two days of receiving the order of possession.

The Landlord also seeks an order for unpaid rent. Under s. 67 of the *Act*, the Director may order that a party compensate the other if damage or loss result from that party's failure to comply with the *Act*, the regulations, or the tenancy agreement. Policy Guideline #16 sets out that to establish a monetary claim, the arbitrator must determine whether:

1. A party to the tenancy agreement has failed to comply with the *Act*, the regulations, or the tenancy agreement.
2. Loss or damage has resulted from this non-compliance.
3. The party who suffered the damage or loss can prove the amount of or value of the damage or loss.
4. The party who suffered the damage or loss mitigated their damages.

The applicant seeking a monetary award bears the burden of proving their claim.

Pursuant to s. 26(1) of the *Act*, a tenant must pay rent when it is due whether or not the landlord complies with the *Act*, the Regulations, or the tenancy agreement unless the *Act* grants the tenant the right to deduct all or a portion of the rent. In the present circumstances, rent was not paid in accordance with the Tenancy Agreement and the

Tenant had no lawful reason for withholding rent from the Landlord. I find that the Tenant breached their obligation to pay rent as set out in the Tenancy Agreement. This breach gives rise to the Landlord's claim for a monetary award for unpaid rent.

I accept the undisputed evidence of the Landlord's agent that rent was owed in the amount of \$1,000.00 per month and that rent was not paid as follows:

Month	Rent Due	Rent Paid	Difference
October 2021	\$1,000.00	\$0.00	-\$1,000.00
November 2021	\$1,000.00	\$0.00	-\$1,000.00
December 2021	\$1,000.00	\$0.00	-\$1,000.00
January 2022	\$1,000.00	\$0.00	-\$1,000.00
February 2022	\$1,000.00	\$0.00	-\$1,000.00
March 2022	\$1,000.00	\$0.00	-\$1,000.00
April 2022	\$1,000.00	\$0.00	-\$1,000.00
May 2022	\$1,000.00	\$1,000.00	\$0.00
June 2022	\$1,000.00	\$0.00	-\$1,000.00
July 2022	\$1,000.00	\$1,000.00	\$0.00
<b>TOTAL OWED</b>			<b>\$8,000.00</b>

As the Tenant continues to reside within the rental unit, I find that the Landlord could not have mitigated their damages under the circumstances. I find that the Landlord has established a claim for unpaid rent in the amount of \$8,000.00 under s. 67 of the *Act*

The Landlord's agents made submissions with respect to utilities that are said to be owed by the Tenant. Rule 2.2 of the Rules of Procedure is clear that a claim is limited to what is stated in the application. The Landlord's application is limited to a claim of \$5,000.00 for unpaid rent. It makes no reference to utilities. Though I permitted the amendment for unpaid rent after the application was made, I would not permit a totally new claim to be added at the hearing through amendment. Such an approach would run afoul the Tenant's right to procedural fairness, namely the right to know the claim being made against them. As the issue was not properly before me, I make no orders or findings with respect to any claim the Landlord may have with respect to unpaid utilities.

I exercise my discretion under s. 72(2) of the *Act* and direct that the Landlord withhold the security deposit of \$475.00 in partial satisfaction of the amount the owed by the Tenant.

Conclusion

The Landlord is entitled to an order of possession under s. 55 of the *Act*. I order that the Tenant give vacant possession of the rental unit to the Landlord within **two (2) days** of receiving the order of possession.

The Landlord is entitled to unpaid rent in the amount of \$8,000.00.

As the Landlord was successful in its application, I find that it is entitled to the return of its filing fee. Pursuant to s. 72(1) of the *Act*, I order that the Tenant pay the Landlord's \$100.00 filing fee.

I make a total monetary order taking the following into account:

Item	Amount
Unpaid rent	\$8,000.00
Landlord's filing fee pursuant to s. 72(1)	\$100.00
Less the security deposit to be retained by the Landlord as per s. 72(2)	-\$475.00
<b>TOTAL</b>	<b>\$7,625.00</b>

Pursuant to ss. 67 and 72 of the *Act*, I order that the Tenant pay **\$7,625.00** to the Landlord.

It is the Landlord's obligation to serve the order of possession and monetary order on the Tenant.

If the Tenant does not comply with the monetary order, it may be filed with by the Landlord with the Small Claims Division of the Provincial Court and enforced as an order of that Court.

If the Tenant does not comply with the order of possession, it may be filed by the Landlord with the Supreme Court of British Columbia 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 12, 2022

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Residential Tenancy Branch