



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding TBD PROPERTY MANAGEMENT  
CO and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes:** Tenant: OLC, CNR, LRE, MNRT, RR, MNDCT, LAT, PSF  
Landlord: OPR-DR, FFL

### **Introduction**

This hearing was reconvened from an adjourned hearing originally scheduled for May 17, 2022. As per written request by both parties, as noted in the letter dated June 9, 2022, the current matters were adjourned by consent of both parties to the mutually agreed upon date of August 30, 2022.

This hearing was set to deal cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlords requested:

- an Order of Possession for cause pursuant to section 55; and
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

The tenant requested:

- cancellation of the landlord’s 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to suspend or set conditions on the landlord’s right to enter the rental unit pursuant to section 70;
- a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;
- a monetary order for compensation for emergency repairs under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;

- an order to the landlord to make repairs to the rental unit pursuant to section 33;
- an order to the landlord to provide services or facilities required by law pursuant to section 65.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:46 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. The landlords attended the hearing with their legal counsel, AL, and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the latest Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the landlords, their counsel, and I were the only ones who had called into this teleconference. The attending parties were clearly informed of the RTB Rules of Procedure Rule 6.11 which prohibits the recording of a dispute resolution hearing. All parties confirmed that they understood.

Rule 7.3 of the Rules of Procedure provides as follows:

### **7.3 Consequences of not attending the hearing**

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

The landlords acknowledge receipt of the tenant's application. As the tenant did not attend this hearing, their entire application is dismissed without leave to reapply. Counsel for the landlord described the efforts that the landlord had undertaken to serve the tenant with their dispute resolution package and evidentiary materials. The landlords provided affidavits to support these attempts by process servers hired by the landlord. Counsel for the landlord confirmed that a process server attended the tenant's rental unit on March 31, 2022, and attached an envelope containing the documents to the door handle. The landlords provided the affidavit dated and signed April 8, 2022 confirming the details of the service.

Section 89 of the *Act* establishes the following special rules for service of documents.

### ***Special rules for certain documents***

**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].*

*(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].*

In accordance with sections 89(2)(d) and 90 of the Act, I find the tenant deemed served with the landlords' application package on April 3, 2022, 3 days after posting.

The landlords provided undisputed testimony that the tenant was served with the 10 Day Notice, with an effective date of February 15, 2022, on February 2, 2022, which was posted on the tenant's door. In accordance with sections 88 and 90 of the *Act*, I find that the tenant deemed served with the 10 Day Notice on February 5, 2022, 3 days after posting.

**Issue(s) to be Decided**

Are the landlords entitled to an Order of Possession based on the 10 Day Notice?

Are the landlords entitled to a monetary award for unpaid rent or money owed under the tenancy agreement, regulation, or *Act*?

Are the landlords entitled to recover the filing fee for their application?

**Background and Evidence**

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This fixed-term tenancy began on April 1, 2021, with monthly rent set at \$1,100.00, payable on the first of the month. The landlords still holds a security deposit of \$550.00, and a pet damage deposit of \$100.00.

The landlords served the tenant with a 10 Day Notice on February 2, 2022 for failing to pay the February 2022 rent. Counsel for the landlords confirmed that the tenant did make two payments towards the February 2022 rent. The tenant made a partial payment of \$550.00 on February 4, 2022, and a second payment of \$550.00, which was received on February 11, 2022. The landlords provided a bank statement showing the deposit of these monies. The landlords noted to the tenant that the second payment was for use and occupancy only. Counsel for the landlord noted that the tenant has failed to pay any rent for the months of March 2022 through to the date of the hearing on August 30, 2022. Counsel noted that the tenant now owes \$6,600.00 in unpaid rent. The landlords are seeking an Order of Possession, as well as a Monetary Order for unpaid rent.

## **Analysis**

Section 55(1) and (1.1) of the *Act* reads as follows:

### **Order of possession for the landlord**

**55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

(1.1) If an application referred to in subsection (1) is in relation to a landlord's notice to end a tenancy under section 46 [*landlord's notice: non-payment of rent*], and the circumstances referred to in subsection (1) (a) and (b) of this section apply, the director must grant an order requiring the payment of the unpaid rent.

Section 26 of the *Act*, in part, states as follows:

### **Rules about payment and non-payment of rent**

**26** (1) 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 find that the 10 Day Notice complies with section 52 of the *Act*. I note that although the tenant did argue that the second payment was made at 11:54 p.m. on February 10, 2022, the tenant failed to ensure that the payment would be received by midnight of that date. Although unfortunate and perhaps inconvenient, due to processing times for electronic transfers between the accounts, the landlords did not receive the payment until February 11, 2022, despite the fact that the money was deducted from the tenant's account prior to that date. The tenant bears the responsibility of ensuring that rent payments are made, and received on time by the landlords, taking in account processing and delivery times. For example, if the tenant was to send payment by registered mail, even if the tenant had sent the payment by the date the payment is due, the payment is not deemed received

until at least 5 days later, or when the recipient acknowledges receipt, whichever is earlier. The tenant had waited to send payment within the last 6 minutes, late on February 10, 2022, and took the risk of late payment. In this case, I am satisfied that the evidence shows that the payment was not received until the next day, past the required 5 days. I am also not satisfied that the tenant had established that they had the right to withhold any rent payments.

Based on my decision to dismiss the tenant's application for dispute resolution and pursuant to section 55(1) of the *Act*, I find that this tenancy ended on the effective date of the 10 Day Notice, February 15, 2022. As the tenant has not moved out, I find that the landlords are entitled to a 2 day Order of Possession. The landlords 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.

Based on my decision to dismiss the tenant's application for dispute resolution and pursuant to section 55(1.1) of the *Act*, I find that the landlords are entitled to a monetary order in the amount of \$6,600.00. for the outstanding rent for this tenancy. I also find that the landlords are entitled to recover the \$100.00 filing fee.

The landlords continue to hold the tenant's security and pet damage deposit totalling \$650.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlords to retain the tenant's deposits in partial satisfaction of the monetary claim.

### **Conclusion**

I dismiss the tenant's entire application without leave to reapply.

I grant an Order of Possession to the landlords effective **two (2) days after service on the tenant**. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The landlords shall be provided with a Monetary Order in the amount of \$6,600.00 for the outstanding rent for this tenancy plus \$100.00 for recovery of the filing fee. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlords to retain the tenant's deposits in partial satisfaction of the monetary claim. The landlords will be provided with a Monetary Order for the remaining amount.

The tenant must be served with this Order as soon as possible. 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: August 30, 2022

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Residential Tenancy Branch