



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding AFFORDABLE HOUSING NON PROFIT RENTAL  
ASSOCIATION and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR-DR, MNR-DR, FFL

### Introduction

On March 28, 2022, the Landlord made an Application for Dispute Resolution seeking an Order of Possession for Unpaid Rent based on a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) pursuant to Section 46 of the *Residential Tenancy Act* (the “Act”), seeking a Monetary Order for unpaid rent pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

This hearing was scheduled to commence via teleconference at 11:00 AM on August 19, 2022.

N.C. attended the hearing as an agent for the Landlord, and the Tenant attended the hearing as well. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited, and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

N.C. advised that the Landlord served the Tenant with the Notice of Hearing package and some evidence by registered mail on April 29, 2022 (the registered mail tracking number is noted on the first page of this Decision). The Tenant claimed that he was out of the province and that he did not receive this until he returned in July 2022. Based on this undisputed testimony, I am satisfied that the Tenant was deemed to have received

the Notice of hearing package and some evidence five days after it was mailed. Regardless, the Tenant did receive this package in July 2022. As such, I am satisfied that the Tenant was sufficiently served this package.

He then stated that the Landlord's additional evidence was posted to the Tenant's door on July 7, 2022, and August 3, 2022. The Tenant confirmed that he received evidence in the Landlord's Notice of Hearing package, but he did not receive any evidence on his door. When reviewing the testimony of the parties, I was satisfied that the Landlord, more likely than not, did post this evidence to the Tenant's door on July 7 and August 3, 2022. As such, I have accepted this evidence and will consider it when rendering this Decision.

The Tenant confirmed that he did not submit any documentary evidence for consideration on this file.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to recover the filing fee?

#### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on August 1, 2018, that the rent was established at an amount of \$1,645.00 per month, and that it was due on the first day of each month. A security deposit of \$802.50 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence for consideration.

N.C. advised that the Notice was served to the Tenant by being posted to the Tenant's door on February 23, 2022. The Tenant stated that he did not receive this as he was out of town, and that he did not have anyone check the rental unit for him. The Notice indicated that \$16,940.00 was owing for rent on February 1, 2022. As well, the effective end date of the tenancy was noted on the Notice as March 8, 2022.

When N.C. was asked to make submissions of the amount of rent owing on the Notice, he directed me to a spreadsheet ledger of the calculated arrears; however, the total amount owing of \$16,940.00 actually also included parking and NSF fees. As such, the amount of rent in arrears that was noted on the Notice was incorrect. N.C. was unable to calculate the total rent amount in arrears as of February 1, 2022, nor was he able to explain why rent was charged in the amounts of \$745.00 per month for the months of May and June 2020. However, he confirmed that the payments made by the Tenant, as noted on that spreadsheet, were correct. As well, he submitted that the Tenant has not paid any rent since November 2021.

The Tenant advised that he did not fully understand what this Application pertained to, and he did not know how to respond. He confirmed that he was not sure how much he was in arrears for rent, and he claimed that he made more payments than what was noted on the Landlord's spreadsheet. However, he did not submit any documentary evidence to corroborate this submission. He confirmed that he was in arrears for some amount of rent, that he was currently able to make a lump sum payment of \$9,000.00 to put towards some of the rent that he owes, and that he has not paid any rent since November 2021. He confirmed that he did not have any authority under the *Act* for withholding the rent

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 26 of the *Act* states that rent must be paid by the Tenant when due according to the tenancy agreement, whether or not the Landlord complies with the tenancy agreement or the *Act*, unless the Tenant has a right to deduct all or a portion of the rent.

Should the Tenant not pay the rent when it is due, Section 46 of the *Act* allows the Landlord to serve a 10 Day Notice to End Tenancy for Unpaid Rent. Once this Notice is received, the Tenant would have five days to pay the rent in full or to dispute the Notice. If the Tenant does not do either, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenant must vacate the rental unit.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the Notice, state the grounds for ending the tenancy, and be in the approved form.

Given that the undisputed evidence is that the Tenant has not paid any rent since at least November 2021, I am satisfied from N.C.'s solemnly affirmed testimony that the Notice was, more likely than not, served to the Tenant by being posted to his door on February 23, 2022. As such, the Tenant was deemed to have received the Notice on February 26, 2022. According to Section 46(4) of the *Act*, the Tenant then had 5 days to pay the overdue rent and/or utilities or to dispute this Notice. Section 46(5) of the *Act* states that *"If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date."*

As the Notice was deemed received on February 26, 2022, the Tenant must have paid the rent in full or disputed the Notice by March 3, 2022 at the latest. The undisputed evidence is that the Tenant did not pay any rent that he believed was owed, nor did he dispute the Notice to cancel it. When reviewing the Notice, I acknowledge that the amount of rent owing on the Notice was incorrect. However, given that the Tenant acknowledged that he was in arrears a substantial amount of rent, while the exact total was unclear, I note that the Tenant did not make any payments within five days of being deemed to have received the Notice.

Had the Tenant made some payment to the Landlord within five days of being deemed to have received the Notice, I may have accepted that he paid the amount of arrears that he believed was owed. However, as no rent was paid at all, I accept that while the amount noted on the Notice was incorrect, there was still some rent outstanding. As such, despite this incorrect amount, I am satisfied that this is still a valid Notice.

Given that the Tenant acknowledged that he was in arrears for a substantial amount of rent and given that he did not submit any documentary evidence to support that he made any payments to the Landlord other than what was stipulated on the Landlord's spreadsheet, I prefer the Landlord's evidence on the whole.

As the Tenant acknowledged that he did not have a valid reason under the *Act* for withholding the rent, I am satisfied that he breached the *Act* and jeopardized his tenancy.

As the Landlord's Notice for unpaid rent is valid, as I am satisfied that the Notice was served in accordance with Section 88 of the *Act*, and as the Tenant has not complied with the *Act*, I uphold the Notice and find that the Landlord is entitled to an Order of Possession for unpaid rent pursuant to Sections 46 and 55 of the *Act*. As such, I grant the Landlord an Order of Possession that takes effect **two days** after service of this Order on the Tenant.

As the Landlord was successful in this Application, I find that the Landlord is entitled to recover the \$100.00 filing fee.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlord a Monetary Order as follows:

#### **Calculation of Monetary Award Payable by the Tenant to the Landlord**

<b>Rent owing</b>	<b>Rent Charged</b>	<b>Rent Paid</b>	
Mar 1, 2020	\$1,645.00	\$1,695.00	
April 1, 2020	\$1,645.00	\$0.00	
May 1, 2020	\$745.00	\$0.00	
June 1, 2020	\$745.00	\$0.00	
July 1, 2020	\$1,645.00	\$0.00	
August 1, 2020	\$1,645.00	\$0.00	
September 1, 2020	\$1,645.00	\$1,695.00	
October 1, 2020	\$1,645.00	\$0.00	
November 1, 2020	\$1,645.00	\$2,362.50	
December 1, 2020	\$1,645.00	\$2,362.50	
January 1, 2021	\$1,645.00	\$0.00	
February 1, 2021	\$1,645.00	\$2,412.50	
March 1, 2021	\$1,645.00	\$2,412.50	
April 1, 2021	\$1,645.00	\$0.00	

May 1, 2021	\$1,645.00	\$2,362.50	
June 1, 2021	\$1,645.00	\$0.00	
July 1, 2021	\$1,645.00	\$2,362.50	
August 1, 2021	\$1,645.00	\$2,362.50	
September 1, 2021	\$1,645.00	\$0.00	
October 1, 2021	\$1,645.00	\$2,362.50	
November 1, 2021	\$1,645.00	\$0.00	
December 1, 2021	\$1,645.00	\$0.00	
January 1, 2022	\$1,645.00	\$0.00	
February 1, 2022	\$1,645.00	\$0.00	
March 1, 2022	\$1,645.00	\$0.00	
April 1, 2022	\$1,645.00	\$0.00	
May 1, 2022	\$1,645.00	\$0.00	
June 1, 2022	\$1,645.00	\$0.00	
July 1, 2022	\$1,645.00	\$0.00	
August 1, 2022	\$1,645.00	\$0.00	
Filling fee	\$100.00	-	
Totals	\$47,650.00	\$22,390.00	
<b>Total Monetary Award for Rent</b>			<b>\$25,260.00</b>

The Landlord is at liberty to make a separate Application for any other monetary amounts owing.

### Conclusion

Based on the above, I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant. Should the Tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

In addition, the Landlord is provided with a Monetary Order in the amount of **\$25,260.00** in the above terms, and 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 19, 2022

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Residential Tenancy Branch