



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **MNU-DR, OPU-DR, FFL**

### Introduction

On June 08, 2022, an Adjudicator appointed pursuant to the *Residential Tenancy Act* (the *Act*) adjourned the landlord's application for dispute resolution for the following items to a participatory hearing. She did so on the basis of an *ex parte* hearing using the Residential Tenancy Branch's direct request process. The adjudicator adjourned the direct request for the following reasons:

1. the landlord's name on the tenancy agreement (person T.B.) does not match the landlord's name on the Application for Dispute Resolution by Direct Request (Person M.T.B.).
2. the tenancy agreement submitted by the landlord has no date indicating the day in the month on which the rent is due, which is a requirement of the Direct Request process.

I have been delegated authority under the *Act* to consider the landlord's application for:

- A monetary order for unpaid rent and/or utilities by direct request pursuant to section 55; and
- An order of possession following the issuance of a 10 Day Notice to End Tenancy for Unpaid Rent/Utilities that was not disputed, pursuant to section 55;
- Authorization to recover the filing fee from the other party pursuant to section 72

The tenant did not attend the hearing although I left the teleconference hearing connection open throughout the hearing which commenced at 11:00 a.m. and ended at 11:45 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord attended the hearing and testified that she served each of the named tenants with the Notice of Dispute Resolution Proceedings package on June 10, 2022 via registered mail. The landlord provided tracking numbers for the mailings which are recorded on the cover page of this decision. The landlord testified that the mailings were returned to her as unclaimed. The tenants are deemed served with the Notice of Dispute Resolution Proceedings packages on June 15, 2022, five days after they were sent via registered mail in accordance with sections 89 and 90 of the Act.

#### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession and a monetary order for unpaid rent and/or utilities?

Can the landlord recover the filing fee?

#### Background and Evidence

The landlord submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement which was signed by the tenants on March 9, 2021, indicating a monthly rent of \$1,700.00, for a tenancy commencing on March 15, 2021
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated April 11, 2022, for \$2,350.00 in unpaid rent and \$288.00 in unpaid utilities. The 10 Day Notice provides that the tenants had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the stated effective vacancy date of April 22, 2022
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated April 12, 2022, for \$2,350.00 in unpaid rent and \$288.00 in unpaid utilities. The 10 Day Notice provides that the tenants had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the stated effective vacancy date of April 22, 2022
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that a 10 Day Notice was posted to the tenants' door at 10:30 am on April 12, 2022
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy

The landlord gave the following undisputed testimony. Regarding the issue with her name, the landlord testified that her full legal name is MTSB. In her day-to-day dealings, she uses the name T. She uses both M and T interchangeably, depending on

the document. She used M when issuing the notice to end tenancy, since that is the first name appearing on her driver's license.

The tenancy agreement with the tenant doesn't show that rent is due on the first of the month, however the landlord and tenant established that it is, pointing to a text message from the tenant AA dated June 27, 2021, stating that rent for the following month would be late.

The landlord testified that rent was set at \$1,700.00 per month, payable on the first day of each month, commencing March 15, 2021. At the commencement of the tenancy, the landlord collected a security deposit of \$850.00 which she continues to hold.

The tenants began to fall behind in their rent and in October of 2021, an agency paid off some arrears in rent. That agency advised the landlord that RDW was no longer living in the rental unit and asked that the landlord redraft a tenancy agreement removing RDW. The landlord complied and sent the agency the first page of a new tenancy agreement without RDW as a tenant. During the hearing before me, the landlord acknowledged that RDW should not be held responsible for arrears in rent anytime after October 27, 2021, the date the landlord amended the tenancy agreement removing RDW as a tenant. This is also the reason why RDW is not named on the notice to end tenancy.

On April 22, 2022, the landlord served the tenant AA with a 10 Day Notice to End Tenancy for Unpaid Rent/Utilities dated April 12, 2022, by leaving a copy of it in the tenant's mailbox; by attaching a copy to the tenant's door and by sending a copy via text message. The notice to end tenancy states the tenant failed to pay \$650.00 owing from March's rent, plus \$1,700.00 due on April 1, 2022. The tenant also failed to pay utilities in the amount of \$288.00 following written demand on March 20, 2022. The landlord provided a copy of the written demand sent to the tenant via email and text message as evidence.

The landlord testified that the utilities are shared 50/50 with another adjoining unit in the building. The tenant has faithfully paid the utilities upon receiving the written demand from the landlord since the beginning of the tenancy but stopped paying them recently.

The landlord testified that on April 22<sup>nd</sup>, the same day she served the tenant with the 10 Day Notice to End Tenancy for Unpaid Rent/Utilities, the tenant paid her \$750.00 by e-transfer. The landlord testified that she received an additional \$800.00 by e-transfer on April 27<sup>th</sup>. Since that last payment, the tenant has not paid any money for rent, utilities,

or arrears. The landlord seeks additional rent for May, June, July and August as well as a further \$208.00 for hydro utility recorded as half the bill dated May 18<sup>th</sup>, provided as evidence.

### Analysis

Based on the undisputed evidence before me, I find that MTB, the person named as landlord on the notice to end tenancy is the same person as TB, the person named on the tenancy agreement. Both variations of the name represent the same person and either variation is the correct party to sign the notice to end tenancy.

I further find that, based on the pattern established at the commencement of the tenancy, that rent is due on the first day of the month.

I am satisfied that the tenant was served with the landlord's 10 Day Notice to End Tenancy for Unpaid Rent/Utilities on April 25, 2022, three days after it was posted to his door in accordance with sections 88 and 90 of the *Act*. I have reviewed the notice to end tenancy and I find it complies with the form and content provisions as set out in section 52 of the *Act*. The effective date is automatically changed to May 5, 2022 pursuant to section 53 of the *Act*.

Pursuant to section 55(2)(b), a landlord may request an order of possession of a rental unit if a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired. The director may grant an order of possession and grant an order requiring the payment of rent in the circumstances described above, pursuant to section 55(4).

The time for making an application to dispute a notice to end tenancy for unpaid rent is five days, pursuant to section 46 of the *Act*. The tenant did not file the application to dispute the notice to end tenancy or pay the full arrears in rent as shown on the notice. Pursuant to section 55(4), the landlord is entitled to an Order of Possession. As the (corrected) effective date shown on the notice to end tenancy has passed, the landlord is granted an Order of Possession effective 2 days after service upon the tenant.

Based on the landlord's undisputed testimony, I make the following findings:

I find the tenant RDW is no longer a tenant responsible for paying rent to the landlord any time after October 27, 2021. As such, I dismiss any monetary claim sought against RDW for unpaid rent or utilities.

I find the tenant AA was in arrears of rent for March 2022 in the amount of \$650.00 and didn't pay rent in the amount of \$1,700.00 for April 2022. For arrears in rent, the landlord is entitled to compensation from AA, less the 2 payments of \$750.00 and \$800.00 made on April 22<sup>nd</sup> and April 27<sup>th</sup>. [ $\$650.00 + \$1,700.00 - \$750.00 - \$800.00 =$  **\$800.00**].

I find the tenant to be an overholding tenant, pursuant to section 57 of the *Act*. The landlord is entitled to compensation for the months of May, June, and July 2022 in the amount of \$1,700.00 per month pursuant to section 57(3). [ $\$1,700.00 \times 3 =$  **\$5,100.00**]

I find the tenant agreed to pay 50% of the hydro utility for and failed to pay them after being served with a written demand for payment. The landlord is entitled to compensation in the amount of \$288.00 for March and April, plus an additional \$208.00 for May and June. [ $\$288.00 + \$208.00 =$  **\$496.00**].

As the landlord's application was successful, the landlord is also entitled to recovery of the **\$100.00** filing fee for the cost of this application.

The landlord continues to hold the tenant's security of **\$850.00**. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's security deposit in partial satisfaction of the monetary award.

Item	Amount
March and April 2022 arrears	\$800.00
Overholding tenant arrears May, June, July 2022	\$5,100.00
Hydro utility March to June, 2022	\$496.00
Filing fee	\$100.00
Less security deposit	(\$850.00)
<b>TOTAL</b>	<b>\$5,646.00</b>

### Conclusion

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

I award the landlord a monetary order against the tenant, AA in the amount of **\$5,646.00**.

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 02, 2022

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Residential Tenancy Branch