



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **MNR-DR, OPR-DR, FFL**

### Introduction

This hearing dealt with an application by the landlord pursuant to the Residential Tenancy Act ("the Act") for orders as follows:

- an Order of Possession pursuant to section 55 of the Act
- a Monetary Order for unpaid rent pursuant to section 67 of the Act
- recovery of the filing fee pursuant to section 72 of the Act

The landlord attended the hearing being represented by an agent, S.C.. The tenant, C.M. did not attend.

The landlord's agent confirmed she was not recording the hearing pursuant to Rule of Procedure 6.11. The landlord's agent was affirmed.

The landlord's agent confirmed service of the 10 Day Notice by affixing it to the door of the tenant's unit on April 4, 2022. The landlord provided an RTB-34 "Proof of Service" form in their evidentiary package. This document was signed by a witness and dated April 4, 2022. Pursuant to sections 88 and 90 of the *Act* the tenant is deemed served with the 10 Day Notice on April 7, 2022.

The landlord testified they served a Notice of Dispute Resolution by registered mail. As part of their evidentiary package the landlord included a photo of registered mail receipts dated May 31, 2022. Pursuant to sections 89 and 90 of the *Act* the tenant is deemed to have been served with the Notice and supporting materials on June 5, 2022.

### Preliminary Matters

This was initially an application by way of a direct request. It was adjourned to a participatory hearing by the adjudicator as the original tenancy agreement was not signed by the tenant named in the application as required for a direct request application. The tenant C.M. is named in the tenancy agreement and the evidence in the hearing from the landlord's agent is that the tenant has lived there for multiple years. The agent herself advised that she personally had dealings with the tenant and assisted

him in securing utilities in his name. Therefore, I find that despite not having signed the initial tenancy agreement, C.M. is a tenant and has a tenancy agreement with the named landlord.

#### Issue(s) to be Decided

1. Is the 10 Day Notice to End Tenancy for Unpaid Rent valid and enforceable against the tenant? If so, is the Landlord entitled to an Order of Possession?
2. Is the landlord entitled to a Monetary Order for unpaid rent and utilities?
3. Is the landlord entitled to reimbursement for filing fees?

#### Background and Evidence

The tenancy commenced on August 1, 1991, on a month-to-month basis. Initial rent was \$540.00 per month and a security deposit of \$270.00 was paid and is still held in trust by the landlord. The landlord provided several notices of rent increase that were given to the tenant over the years. The final rent increase occurred on January 1, 2022, and the current rent is \$1,206.00 per month. The tenant currently occupies the unit.

The landlord's agent advised that as of April 4, 2022, which was the date of service of the 10 Day Notice, the tenant owed \$4,492.42 in unpaid rent and utilities. A partial payment of \$1,200.00 was made by the tenant on April 6, 2022 bringing the total amount of unpaid rent on that date to \$3,292.42.

The landlord provided a direct request worksheet in support of the request for a Monetary Order for unpaid rent. The worksheet showed that as of February 7, 2022 the tenant owed \$2,980.00. In the hearing the landlord's agent provided a further detailed breakdown of rent and utilities owing, and payments made by the tenant from January 1, 2018, to September 1, 2022. The source of her information was a software program used to track rent and payments. She provided further information regarding rent and utilities owing up until September 1, 2022. The current outstanding amount owed by the tenant for unpaid rent and utilities is \$7,122.42 and she seeks to amend the application to reflect the current amount outstanding and requests a Monetary Order for \$7,222.42, including the \$100.00 filing fee.

#### Analysis

The 10 Day Notice was before me. I find that it complies with section 52 of the Act and is correct in form and content. The landlord's agent satisfied me through her evidence that the tenant failed to pay rent when due for April 2022, and the payment that occurred on April 6, 2022, was not a full rent payment. Further, the landlord, through her agent satisfied me that the tenant has failed to pay full rent for the months of May through September 2022 and

that the amount currently owed by the tenant for unpaid rent and utilities has increased since the initial application for Dispute Resolution was made.

RTB Procedural Guideline 4 states:

**4.2 Amending an application at the hearing**

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

The evidence is, and I find that the tenant has not paid full rent since the time of the initial application, and it is appropriate to amend the application to include the amount of unpaid rent subsequent to service of the Notice upon the tenant. The application is therefore amended pursuant to section 64(3)(c) of the *Act* to reflect the amount of rent owing to date of \$7,122.42 (unpaid rent from January 2018 through September 2022).

The tenant failed to pay the entire amount of unpaid rent within five days of receiving the 10 Day Notice to End Tenancy on April 4, 2022. The tenant has not made an application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) and section 55(2)(b) of the *Act*, the tenant's failure to take either of these actions within five days has led to the end of the tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by April 18, 2022. As that has not occurred, I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. As noted in *Policy Guideline #16* in order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove entitlement to a claim for a monetary award.

The landlord's agent gave specific, detailed evidence of rent and utilities owing, and the dates they were owed, along with evidence of payments made by the tenant towards rent and utilities owing, and the dates those payments were made. She advised that she retrieved that information from the software system the landlord used to track rent and payments. Her evidence was clear, and reliable and therefore I find that the

landlord has established that as of September 1, 2022, the tenant owed \$7,122.42 and is therefore entitled to a monetary order pursuant to section 67 of the Act.

As the landlord is successful in her application, she is also entitled to recover her \$100.00 filing fee. Using the offsetting provisions contained in section 72 of the Act, the landlord may retain the tenant's security deposit in partial satisfaction for their monetary award.

### Conclusion

The landlord is granted an Order of Possession pursuant to section 55 of the Act for the subject premises, effective two days after service of the Order on the tenant. The Order should be served as soon as possible and may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

The landlord is granted a Monetary Order pursuant to section 67 of the Act in the amount of \$6,752.42 as follows:

<b>Item</b>	<b>Amount</b>
Unpaid rent January 2018 through September 2022	7,122.42
Less return of filing fee and security deposit	(-370.00)
Total =	\$6,752.42

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: September 2, 2022

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Residential Tenancy Branch