



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR-DR, MNR-DR, FFL

### Introduction

On April 29, 2022, an adjudicator appointed pursuant to the *Residential Tenancy Act* (the “Act”) adjourned the Landlord’s application for dispute resolution 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:

*On the second page of the Proof of Service Notice to End Tenancy form there is no signature of a witness, or a signature of the person who received the 10 Day Notice, to confirm service of the 10 Day Notice to the tenant.*

*I find I am not able to confirm service of the 10 Day Notice to the tenant, which is a requirement of the Direct Request Proceeding, and that a hearing is necessary to address this issue.*

This hearing dealt with the Landlord’s application under the Act for:

- an Order of Possession under a 10 Day Notice to End Tenancy for Unpaid Rent dated March 17, 2022 (the “10 Day Notice”) pursuant to sections 46 and 55;
- a Monetary Order of \$1,865.97 for unpaid rent pursuant to sections 26 and 55; and
- authorization to recover the filing fee for this application from the Tenant pursuant to section 72.

The Landlord’s agent FR attended this hearing. FR was given a full opportunity to be heard, to present affirmed testimony, and to make submissions.

The Tenant did not attend this hearing. I left the teleconference hearing connection open until 11:10 am in order to enable the Tenant to call into the hearing scheduled to start at 11:00 am. I confirmed that the correct call-in numbers and participant access code had been provided in the notice of dispute resolution proceeding. I used the

teleconference system to confirm that FR and I were the only ones who had called into the hearing.

I advised FR that the Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”) prohibit unauthorized recordings of dispute resolution hearings.

#### Preliminary Matter – Service of Dispute Resolution Documents

FR confirmed the notice of dispute resolution proceeding package (the “NDRP Package”) was sent to the Tenant by registered mail on May 4, 2022. The Landlord submitted a Canada Post registered mail receipt with tracking number in support. That tracking number is referenced in the cover page of this decision. Based on the foregoing, I find the Landlord served the Tenant with the NDRP Package in accordance with section 89(2)(b) of the Act. I find that pursuant to section 90(a) of the Act, the Tenant is deemed to have received the NDRP Package on May 9, 2022.

I note the tracking information for the NDRP Package shows that the Tenant did not pick up the package from Canada Post.

Residential Tenancy Policy Guideline 12. Service Provisions states:

Where a document is served by Registered Mail or Express Post, with signature option, the refusal of the party to accept or pick up the item, does not override the deeming provision. Where the Registered Mail or Express Post, with signature option, is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing.

I accept FR’s testimony that the Tenant has previously refused to accept service from the Landlord. I am therefore satisfied that the Tenant’s refusal to pick up the NDRP Package does not override the deeming provision in section 90 of the Act. I find the Tenant is deemed to have received the NDRP Package sent by the Landlord via registered mail as stated above.

Records from the Residential Tenancy Branch indicate that the Landlord served the Tenant with the Landlord’s supporting documents in person on March 31, 2022. I find the Tenant has been served with the Landlord’s documentary evidence on March 31, 2022 in accordance with section 88(a) of the Act.

Preliminary Issue – Tenant Has Vacated Rental Unit

FR testified that the Tenant moved out of the rental unit at the end of May 2022. Based on FR's testimony, I find that it is not necessary for the Landlord to be granted an Order of Possession under section 55 of the Act.

Preliminary Issue – Amendment of Landlord's Application

FR submitted that the Landlord seeks to recover payment up to the end of May 2022.

I note the Landlord's monetary claim on this application lists only \$1,865.97 for unpaid rent owing as of March 2022. I find that the Landlord is seeking an amendment to this application in order to request monetary compensation for overholding by the Tenant under section 57 of the Act.

Rule 4.2 of the Rules of Procedure 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.

I find the Tenant can reasonably anticipate the Landlord to seek additional payment for use and occupancy of the rental unit to the date that the Tenant vacated the rental unit. Accordingly, I allow the Landlord to amend this application to include a monetary claim for compensation for overholding by the Tenant for the months of April and May 2022.

FR also submitted that the Landlord is seeking to recover a one-time late fee of \$25.00 for the Tenant's late payment of rent. I find that the parties' tenancy agreement provides for a late fee at clause 12, and that it would be reasonable to amend the Landlord's application to include this amount in the circumstances.

Issues to be Decided

1. Is the Landlord entitled to compensation for unpaid rent?

2. Is the Landlord entitled to payment of a late fee and compensation for overholding by the Tenant?
3. Is the Landlord entitled to recover the filing fee?

### Background and Evidence

This tenancy commenced on February 21, 2021 for a one year fixed term and continued thereafter on a month-to-month basis. As of February 1, 2022, rent has been \$1,827.00 per month, due on the first day of each month. The Tenant paid a security deposit of \$900.00 which is held in trust by the Landlord.

FR testified that her firm took over as the property manager for the Landlord in March 2022.

FR testified that the Tenant was served in person with a copy of the 10 Day Notice on March 17, 2022. FR testified the Tenant took the 10 Day Notice but refused to sign on the Proof of Service form to confirm receipt.

A copy of the 10 Day Notice has been submitted into evidence. The 10 Day Notice is dated March 17, 2022 and has an effective date of March 28, 2022. The 10 Day Notice states that the Tenant failed to pay \$1,865.97 due on March 1, 2022.

The Landlord submitted a direct request worksheet which explains the calculation of the amount indicated on the 10 Day Notice as follows:

Item	Amount
February 2022 Rent	\$1,838.97
March 2022 Rent	\$1,827.00
Less Partial Payment Received on March 3, 2022	- \$1,800.00
<b>Total</b>	<b>\$1,865.97</b>

FR testified the amount for February 2022 includes unpaid rent and FortisBC charges.

### Analysis

- 1. Is the Landlord entitled to compensation for unpaid rent?*

Based on FR's testimony under oath, I find that the Tenant was served with a copy of the 10 Day Notice in person on March 17, 2022, in accordance with section 88(a) of the Act. I find that this addresses the concern raised by the adjudicator in her decision dated April 29, 2022.

Section 46(4) of the Act permits a tenant to dispute a 10 day notice to end tenancy for unpaid rent, or pay the overdue rent, within 5 days after receiving such notice. Therefore, the Tenant had until March 22, 2022 to dispute the 10 Day Notice or pay the overdue rent. In this case, the Tenant has not applied to dispute the 10 Day Notice at all and has not paid the overdue rent by March 22, 2022.

Section 46(5) of the Act states that if a tenant who has received a notice under section 46 does not pay the rent or make an application for dispute resolution in accordance with section 46(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 by that date.

Based on the foregoing, I find that pursuant to section 46(5) of the Act, the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the 10 Day Notice, or March 28, 2022.

Sections 55(2)(b) and 55(4) of the Act state as follows:

**Order of possession for the landlord**

55 [...]

(2) A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:

[...]

(b) 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; [...]

[...]

(4) In the circumstances described in subsection (2) (b), the director may, without any further dispute resolution process under Part 5 *[Resolving Disputes]*,

(a) grant an order of possession, and

(b) if the application is in relation to the non-payment of rent, grant an order requiring payment of that rent.

(emphasis added)

Pursuant to section 55(4)(b) of the Act, I order the Tenant to pay the Landlord unpaid rent in the amount of \$1,865.97.

*2. Is the Landlord entitled to payment of a late fee?*

Sections 7(1)(d) and 7(2) of the Residential Tenancy Regulation (the “Regulations”) state as follows:

**Non-refundable fees charged by landlord**

7(1) A landlord may charge any of the following non-refundable fees:

[...]

(d) subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent;

(2) A landlord must not charge the fee described in paragraph (1) (d) or (e) unless the tenancy agreement provides for that fee.

(emphasis added)

Clause 12 of the parties' tenancy agreement states:

**RENT ARREARS.** By law and as required by this Agreement, the tenant must pay rent in full on or before the date it is due. The tenant may be charged an administration fee of up to \$25.00 for late payment of all or a portion of the rent, returned or NSF cheques, plus any service fees charged to the landlord by a financial institution.

(emphasis added)

I accept the Landlord's evidence that the Tenant did not pay rent due on March 1, 2022 in full by the due date.

Section 67 of the Act states:

**Director's orders: compensation for damage or loss**

67 Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Pursuant to section 67 of the Act, I order the Tenant to pay the Landlord \$25.00 as compensation for an administration fee of \$25.00 for late payment of rent, in accordance with section 7(1)(d) of the Regulations and clause 12 of the parties' tenancy agreement.

*3. Is the Landlord entitled to compensation for overholding by the Tenant?*

Section 57(3) of the Act states that a landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended.

Section 57(1) of the Act defines an "overholding tenant" as a tenant who continues to occupy a rental unit after the tenant's tenancy is ended.

Based on the Landlord's testimony, I find that the Tenant is an overholding tenant under section 57(1) of the Act, and that the Landlord is entitled to compensation for the Tenant's use of the rental unit up to the end of May 2022, when the Tenant vacated the rental unit.

Pursuant to section 57 of the Act, I order that the Tenant pay to the Landlord \$3,654.00, or \$1,827.00 × 2 months, as compensation for overholding from April to May 2022.

*4. Is the Landlord entitled to recover the filing fee?*

The Landlord has been successful in this application. I grant the Landlord's claim for recovery of the \$100.00 filing fee under section 72(1) of the Act.

Pursuant to section 72(2)(b) of the Act, I order that the Landlord is authorized to retain the Tenant's \$900.00 security deposit held by the Landlord in partial satisfaction of the total awarded in this application.

The Monetary Order granted to the Landlord for the balance of the amount awarded is calculated as follows:

Item	Amount
Unpaid Rent (including FortisBC) to March 2022	\$1,865.97
Administration Fee for Late Payment of Rent	\$25.00
Compensation for Overholding from April to May 2022 (\$1,827.00 × 2 months)	\$3,654.00
Filing Fee	\$100.00
Less Security Deposit	- \$900.00
<b>Total Monetary Order for Landlord</b>	<b>\$4,744.97</b>

### Conclusion

The Landlord is authorized to retain the Tenant's \$900.00 security deposit in partial satisfaction of the total sum awarded in this application.

Pursuant to sections 55, 57, 67, and 72 of the Act, I grant the Landlord a Monetary Order in the amount of **\$4,744.97** for the balance awarded in this decision. 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: September 8, 2022

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Residential Tenancy Branch