



# 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 originated as a Direct Request proceeding. In an Interim Decision dated August 30, 2022 a participatory hearing was ordered. This Decision should be read in conjunction with the Interim Decision. This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent, pursuant to sections 46 and 55;
- a Monetary Order for unpaid rent, pursuant to sections 26 and 67; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:10 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 11:00 a.m. The landlord and the landlord's business partner attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord, the business partner and I were the only ones who had called into this teleconference.

The landlord confirmed their email addresses for service of this decision and order.

The Interim Decision stated:

Notices of Reconvened Hearing are enclosed with this interim decision. The applicant must serve the Notice of Reconvened Hearing, the interim decision, and all other required documents, upon the tenant within three (3) days of receiving this decision in accordance with section 89 of the *Act*.

The landlord testified that the above documents and the landlord's evidence were served on the tenant via registered mail on September 2, 2022. The landlord entered into evidence a registered mail receipt stating same. I find that the above documents were served on the tenant in accordance with section 89 of the *Act*.

### Issue

1. Is the landlord entitled to an Order of Possession for unpaid rent, pursuant to sections 46 and 55 of the *Act*?
2. Is the landlord entitled to a Monetary Order for unpaid rent, pursuant to sections 26 and 67 of the *Act*?
3. Is the landlord entitled to recover the filing fee from the tenant, pursuant to section 72 of the *Act*?

### Background/Evidence

While I have turned my mind to the documentary evidence and the testimony of the landlord and the business partner, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord provided the following undisputed testimony. This tenancy began on December 10, 2019 with a different landlord. The tenant is currently residing in the subject rental property. Monthly rent in the amount of \$1,800.00 is payable on the first day of each month. A security deposit of \$900.00 and a pet damage deposit of \$250.00 were paid to the landlord. A written tenancy agreement was signed by the tenant and the previous landlord, and a copy was submitted for this application. The landlord purchased the subject rental property in May of 2022.

The landlord testified that on June 22, 2022 he posted a 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") on the tenant's door. The business partner testified that he witnessed the above service. The landlord entered into evidence RTB Form #34 which is a proof of service document in which the landlord was supposed to provide proof that the 10 Day Notice was served.

In this case, the landlord testified that this proof of service document was used to prove that the proof of service document itself was served on the tenant. The landlord testified that RTB Form #34 was served on the tenant on July 11, 2022. The business partner wrote on RTB Form #34 that he observed the landlord post "Proof of Service Notice to end Tenancy (#RTB-34)" on July 11, 2022. A proof of service document pertaining to the 10 Day Notice was not entered into evidence.

The 10 Day Notice was entered into evidence, is signed by the landlord, is dated June 22, 2022, gives the address of the rental unit, states that the effective date of the notice is July 3, 2022, is in the approved form, #RTB-30, and states that the tenancy is ending because the tenant failed to pay rent in the amount of \$1,800.00 that was due on June 1, 2022.

The tenant did not file an application for dispute resolution seeking to cancel the 10 Day Notice.

The landlord testified that the tenant was served the 10 Day Notice because the tenant did not pay June 2022's rent when it was due on June 1, 2022. The landlord testified that the tenant has not made any rent payments whatsoever from June to September 2022 rent. The landlord testified that the total amount outstanding is \$7,200.00.

The landlord's monetary claim in this Application for Dispute Resolution is for \$1,800.00 (June 2022's rent) plus the \$100.00 filing fee, for a total of \$1,900.00.

### Analysis

I find that the issues noted in the Interim Decision regarding RTB Form #34 resulted from the landlord and his business partner's misunderstanding of the purpose of RTB #34 and their inappropriate use of said form. In any event, based on the undisputed testimony of the landlord and the business partner, I find that the 10 Day Notice was posted on the tenant's door on June 22, 2022. I find that the tenant was deemed served with the 10 Day Notice on June 25, 2022, three days after its posting, in accordance with sections 88 and 90 of the *Act*.

Upon review of the 10 Day Notice I find that it meets the form and content requirements of section 52 of the *Act* because it:

- is signed and dated by the landlord,
- gives the address of the subject rental property,

- states the effective date of the notice,
- states the ground for ending the tenancy, and
- is in the approved form, RTB Form #30.

Section 53(2) of the *Act* states that if the effective date stated in a notice to end tenancy is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section. The earliest date permitted under section 46(1) of the *Act* is July 5, 2022. I find that the corrected effective date of the 10 Day Notice is July 5, 2022.

I accept the undisputed testimony of the landlord that he purchased the subject rental property at the end of May 2022 and is the current landlord of the subject rental property, which is why the landlord named on the tenancy agreement is not the same as the landlord named in this Application for Dispute Resolution.

Based on the landlord's undisputed testimony, I find that the tenant failed to pay June 2022's rent in the amount of \$1,800.00 and did not pay the unpaid rent within five days of receiving the 10 Day Notice. The tenant has not made application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenant's failure to take either of these actions within five days led to the end of his tenancy on the corrected effective date of the notice.

In this case, this required the tenant to vacate the premises by July 5, 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. 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.

Section 26(1) of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*. Pursuant to section 26(1) of the *Act*, I find that the tenant was obligated to pay the monthly rent in the amount of \$1,800.00 on the first day of each month. Based on the undisputed testimony of the landlord I find that the tenant did not pay rent in accordance with section 26(1) of the *Act* and owes the landlords \$1,800.00 in unpaid rent for June 2022, as claimed in this Application for Dispute Resolution.

I note that the landlord is at liberty to file an Application for Dispute Resolution for additional damages for outstanding rent and or damages for overholding.

As the landlord was successful in their application, I find that they are entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

### **Conclusion**

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service 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.

I issue a Monetary Order to the landlord in the amount of \$1,900.00.

The landlord is provided with this Order 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: September 29, 2022

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Residential Tenancy Branch