



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      **MNRL, OPR, MNDCL, FFL**

### **Introduction**

This hearing dealt with an application filed by the landlord pursuant the Residential Tenancy Act (the “Act”) for:

A monetary order for unpaid rent pursuant to sections 26 and 67;  
An order of possession for unpaid rent pursuant to sections 46 and 55;  
A monetary order for damages or compensation pursuant to section 67; and  
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 11:10 a.m. 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 and I were the only ones who had called into this teleconference.

The landlord was represented at the hearing by an agent, HP. Also in attendance were witnesses, SM and MM. The witness SM testified that he personally served the tenant with the Notice of Dispute Resolution Proceedings package on May 13, 2022 at approximately 1:00 p.m. The witness testified he knows the tenant as he has had dealings with him in the past. The witness MM testified that she witnessed SM personally serve the tenant with the Notice of Dispute Resolution Proceedings. I am satisfied the tenant was served with the Notice of Dispute Resolution Proceedings on May 13, 2022 pursuant to sections 89 and 90 of the Act.

### **Issue(s) to be Decided**

Should the notice to end tenancy be upheld or cancelled?

Is the landlord entitled to recover the filing fee?

Is the landlord entitled to a monetary order for unpaid rent?

### Background and Evidence

The landlord gave the following testimony. The tenancy began in January 2020. There is no written tenancy agreement. Rent was set at \$1,300.00 per month payable on the first day of each month. No security deposit was collected at the commencement of the tenancy.

The tenant only paid \$815.00 of the monthly rent on March 1, 2022. The tenant did not pay any rent for the month of April, 2022, leaving arrears of \$1,785.00 as of April 1, 2022.

On April 6, 2022 at 4:00 p.m., SM personally served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent/Utilities. The witness MM witnessed the service on that day and a signed proof of service document was provided as evidence. The notice to end tenancy states the tenant failed to pay rent in the amount of \$1,785.00 that was due as of April 1, 2022. The landlord testified that the tenant did not pay the arrears within 5 days of being served with the notice to end tenancy. The landlord has not been served with an application to dispute the notice, either.

On May 3, 2022, the tenant paid \$150.00 of the \$1,300.00 rent due on May 1<sup>st</sup>. The tenant has not paid any rent for June, July, August or September 2022. The landlord sought to amend the application for dispute resolution to seek additional arrears from the tenant.

### Analysis – notice to end tenancy

Based on the undisputed testimony of the landlord and the evidence before me, I find the tenant was duly served with the 10 Day Notice to End Tenancy for Unpaid Rent/Utilities on April 6, 2022, in accordance with sections 88 and 90 of the Act.

Section 46 of the Act states:

Within 5 days after receiving a notice under this section, the tenant may pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution.

If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution, 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.

The tenant failed to pay the rent identified as owing in the notice to end tenancy in full within five days of receiving that Notice, in this case by April 11, 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) 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 stated on the Notice, April 16, 2022.

Section 46(2) of the Act requires that a Notice under this section must comply with section 52 [form and content of notice to end tenancy]. I find the notice to end tenancy meets all other form and content provisions as set out in section 52 of the Act.

As the tenant continues to reside in the rental unit beyond the effective date, I find that the landlord is entitled to an Order of Possession, effective 2 days after service upon the tenant.

#### Analysis - Monetary Order

I am satisfied, based on the undisputed testimony and evidence of the landlord, that the tenant is currently in arrears of **\$1,785.00** for the months of March and April, as stated in the notice to end tenancy. The landlord is entitled to recover rent for those months.

Residential Tenancy Policy Guideline #3 states that tenants are not liable to pay rent after a tenancy agreement has ended pursuant to Section 44 of the Act, however if the tenant remains in possession of the premises (overholds), the tenant will be liable to pay occupation rent on a per diem basis until the landlords recovers possession of the premises. As the tenant continued to occupy the rental unit after the tenancy ended, the tenant is an overholding tenant as defined by section 57 of the Act. Section 57(3) states 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. For the month of May, the landlord is entitled to compensation of [ $\$1,300.00 - \$150.00 = \mathbf{\$1,150.00}$ ].

Pursuant to section 57(3), the landlord is also entitled to compensation for the months of June, July and August and pro-rated compensation for the first 6 days in September [ $\$1,300.00 / 30 \text{ (days)} \times 6 \text{ (days)} = \mathbf{\$130.00}$ ].

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

Item	Amount
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March 2022 arrears	\$485.00
April 2022 arrears	\$1,300.00
May 2022 compensation for overholding	\$1,150.00
June 2022 compensation for overholding	\$1,300.00
July 2022 compensation for overholding	\$1,300.00
August 2022 compensation for overholding	\$1,300.00
September 2022 compensation for overholding (pro-rated)	\$130.00
Filing fee	\$100.00
<b>Total</b>	<b>\$7,065.00</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 in the amount of **\$7,065.00**.

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: September 06, 2022

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Residential Tenancy Branch