



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** Tenant: CNR OLC  
Landlords: OPR, MNRL-S, FFL

### **Introduction**

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlords requested:

- an Order of Possession for unpaid rent pursuant to section 55; and
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant requested:

- cancellation of the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46; and
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:18 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 11:00 a.m. The landlords attended the hearing and were given a full opportunity to be heard, to present sworn 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. During the hearing, I also confirmed from the online teleconference system that the landlords and I were the only ones who had called into this teleconference.

The landlords were clearly informed of the RTB Rules of Procedure Rule 6.11 which prohibits the recording of a dispute resolution hearing. The landlords confirmed that they understood.

Rule 7.3 of the Rules of Procedure provides as follows:

### **7.3 Consequences of not attending the hearing**

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

As the tenant did not attend this hearing, their entire application is dismissed without leave to reapply.

While the landlords confirmed service of the tenant's application, the landlords were unable to confirm whether the tenant was served with the landlords' application. As the landlords were unable to provide sufficient evidence to confirm that the tenant was served with their application, the landlords' entire application is dismissed without leave to reapply.

I note that although the landlords' application was dismissed, the landlords are not required to file an application for an Order of Possession or Monetary Order for unpaid rent if section 55(1) and (1.1) of the *Act* applies. The remainder of this decision will deal with whether landlords are entitled to an Order of Possession and Monetary Order for unpaid rent.

### **Order of possession for the landlord**

**55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

(1.1) If an application referred to in subsection (1) is in relation to a landlord's notice to end a tenancy under section 46 [*landlord's notice: non-payment of rent*], and the circumstances referred to in subsection (1) (a)

and (b) of this section apply, the director must grant an order requiring the payment of the unpaid rent.

The landlords provided undisputed testimony that the tenant was served with the 10 Day Notice on May 2, 2022, which was placed in the tenant's mail slot. In accordance with sections 88 and 90 of the Act, I find the tenant deemed served with the 10 Day Notice on May 5, 2022, 3 days after the 10 Day Notice was posted.

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

Are the landlords entitled to an Order of Possession?

### **Background and Evidence**

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This fixed-term tenancy began on March 1, 2022 with monthly rent set at \$1,600.00, payable on the first of the month. The landlords still hold a security deposit of \$800.00.

The landlords served the tenant with a 10 Day Notice on May 2, 2022 for failing to pay the May 2022 rent. The landlords testified in the hearing that the tenant has not paid any rent since being served with the 10 Day Notice, and is now \$8,000.00 in arrears. The landlord is seeking an Order of Possession, as well a Monetary Order for unpaid rent.

### **Analysis**

Section 55(1) of the *Act* reads as follows:

- 55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if
- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
  - (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I find that the 10 Day Notice complies with section 52 of the *Act*, which requires that the Notice must: be in writing and must: (a) be signed and dated by the landlord or tenant giving the notice, (b) give the address of the rental unit, (c) state the effective date of the notice, (d) state the grounds for ending the tenancy, and (e) be in the approved form.

Based on my decision to dismiss the tenant's application for dispute resolution and pursuant to section 55(1) of the *Act*, I find that this tenancy ended on the corrected, effective date of the 10 Day Notice, May 15, 2022. As the tenant has not moved out, I find that the landlords are entitled to a 2 day Order of Possession. The landlords 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 landlords may enforce this Order in the Supreme Court of British Columbia.

Based on my decision to dismiss the tenant's application for dispute resolution and pursuant to section 55(1.1) of the *Act*, I find that the landlords are entitled to a monetary order in the amount of \$8,0000.00 for the outstanding rent for this tenancy.

In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlords to retain the tenant's security deposit in partial satisfaction of the monetary award.

### **Conclusion**

I dismiss both the landlords' and tenant's applications without leave to reapply.

I grant an Order of Possession to the landlords effective **two (2) days after service on the tenant(s)**. Should the tenant(s) or anyone on the premises 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 \$7,200.00 Monetary Order in favour of the landlords under the following terms:

<b>Item</b>	<b>Amount</b>
Unpaid Rent for May 2022 – September 2022	\$8000.00
Less deposit held	-800.00
<b>Total Monetary Order</b>	<b>\$7,200.00</b>

The tenant(s) must be served with this Order as soon as possible. Should the tenant(s) 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 08, 2022

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Residential Tenancy Branch