



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR MNR FF

### Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. The participatory hearing was held on September 26, 2022. The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession for unpaid rent or utilities; and,
- a monetary order for unpaid rent or utilities.

The Landlord's Agent, the "Agent", provided affirmed testimony at the hearing. The Tenant did not attend the hearing.

The Agent testified that he sent a copy of the Notice of Dispute Resolution Proceeding along with supporting documentary evidence to the Tenant on June 3, 2022, by registered mail. Proof of mailing was provided. I find the Tenant is deemed to have received this package on June 8, 2022, the fifth day after its registered mailing, pursuant to Section 90 of the *Act*.

The Agent has requested to amend his application to include rent that has accrued since the original application date. I turn to the following Rules of Procedure (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.

In consideration of this, I allow the Agent to amend their application to include rent that has accrued since the original application date.

The Agent was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

1. Is the Landlord entitled to an order of possession for unpaid rent or utilities?
2. Is the Landlord entitled to a monetary order for unpaid rent or utilities?

### Background and Evidence

The Agent testified that rent, in the amount of \$1,785.00, is due on the first day of each month. The Agent does not hold a security deposit or pet deposit.

The Agent testified that he served the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) by posting it to the door of the rental unit on May 2, 2022. The amount owing at that time was \$8,198.17. A copy of the 10 Day Notice was provided into evidence.

The Agent explained that the Tenant started having issues paying rent in December 2021, and at the end of January 2022, the Tenant owed \$1,258.00 in unpaid rent. The Agent stated that the Tenant stopped paying rent, completely, as of February 2022, and failed to make any rent payments whatsoever, for February – September 2022.

The Agent testified that no payments were made, following issuance of the 10 Day Notice, and the Tenant continues to reside in the rental unit, despite not paying any rent.

The Landlord confirmed that the Tenant now owes a total of \$15,538.00, for the months noted above.

### Analysis

Based on the unchallenged affirmed testimony and documentary evidence, and on a balance of probabilities, I find as follows:

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent. When a tenant does not pay rent when due, section 46(1) of the *Act* permits a landlord to end the tenancy by issuing a notice to end tenancy. A tenant who receives a notice to end tenancy under this section has five days, under section 46(4) of the *Act*, after receipt to either pay rent in full or dispute the notice by filing an application for dispute resolution. When a tenant does not pay rent in full or dispute the notice, the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice, as per section 46(5) of the *Act*.

In this case, I find that the tenant owed at least \$8,198.17 in past due rent at the time the 10 Day Notice was issued on May 2, 2022. The landlord issued the 10 Day Notice by posting it to the door of the rental unit on May 2, 2022, and I find the tenant received the 10 Day Notice on May 5, 2022, 3 days after it was posted, pursuant to section 90 of the *Act*.

The tenant had 5 days to pay rent in full or file an application for dispute resolution. There is no evidence that the Tenant made any payments towards rent since the Notice was issued. As such, I find the tenant is conclusively presumed to have accepted the end of the tenancy, on the effective date of the notice. The Landlord is entitled to an order of possession, which will be effective two (2) days after it is served on the tenant.

Next, I turn to the Agent's request for a Monetary Order for unpaid rent. After considering the evidence before me, as summarized above, I find there is sufficient evidence before me to demonstrate that the tenant owes and has failed to pay \$15,538.00 in past due rent.

Further, section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the landlord was substantially successful in this hearing, I order the tenant to repay the \$100.

### Conclusion

The landlord is granted an order of possession effective **two days after service** on the tenant. This order must be served on the tenant. If the tenant fails to comply with this

order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

The landlord is granted a monetary order pursuant to Section 67 in the amount of **\$15,638.00** comprised of rent owed. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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 27, 2022

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Residential Tenancy Branch