



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

**Dispute Codes**      OPR, MNRL-S

### Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* ("the Act") for:

- an Order of Possession for unpaid rent pursuant to section 55; and
- a monetary order for unpaid rent pursuant to section 67.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

Pursuant to Rule 6.11 of the RTB Rules of Procedure, the Residential Tenancy Branch's teleconference system automatically records audio for all dispute resolution hearings. In accordance with Rule 6.11, persons are still prohibited from recording dispute resolution hearings themselves; this includes any audio, photographic, video or digital recording. Both parties were also clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour. Both parties confirmed that they understood.

The tenant confirmed receipt of the landlords' dispute resolution application ('Application'). In accordance with section 89 of the Act, I find that the tenant duly served with the Application. All parties confirmed receipt of each other's evidentiary materials.

The tenant confirmed that they were personally served with a 10 Day Notice to End tenancy on May 7, 2022. In accordance with section 88 of the Act, I find the tenant duly served with the 10 Day Notice on May 7, 2022.

Although the landlords had applied for a monetary Order of \$1,400.00 in their initial claim, since they applied another \$5,600.00 in outstanding rent had become owing at the time of the scheduled hearing that was not included in the original application. RTB Rules of Procedure 4.2 allows for amendments to be made in circumstances where the amendment can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made. On this basis, I have accepted the landlords' request to amend their original application from \$1,400.00 to \$7,000.00 to reflect the unpaid rent that became owing by the time this hearing was convened.

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

Are the landlords entitled to an Order of Possession?

Are the landlords entitled to monetary compensation for unpaid rent?

### **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 month-to-month tenancy began on September 4, 2019, with monthly rent currently set at \$1,400.00, payable on the first of the month. The landlords currently hold a security deposit of \$700.00.

The landlords served the tenant with a 10 Day Notice to End Tenancy on May 7, 2022 for failing to pay the May 2022 rent. The landlords testified that they did receive a \$700.00 payment on May 4, 2022, but that this was to pay the remaining outstanding rent for April 2022.

The tenant confirmed in the hearing that they have not paid any rent since the \$700.00 payment on May 4, 2022. The tenant testified that they have been unable to pay the monthly rent as the landlords had required that rent be paid in cash, and no receipts were issued for the rent payments until recently. The tenant testified that the landlords were operating an illegal rental, and did not abide in the *Act*. The tenant testified that

they required receipts to apply for rent subsidies, but the landlords had failed to provide them, causing the tenant financial difficulty, and an inability to pay the monthly rent.

### **Analysis**

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for unpaid rent the tenant may, within five days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch or pay the outstanding rent. I find that the tenant has failed to file an application for dispute resolution within the five days of service granted under section 46(4) of the *Act*, nor did the tenant pay the outstanding rent. Accordingly, I find that the tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 10 Day Notice, May 17, 2022.

I note the tenant's explanation is that they could not pay the rent due to financial difficulties. The tenant testified that they were unable to apply for subsidies due to the landlords' failure to provide receipts. Section 5(3) of the Residential Tenancy Regulation Schedule states that a "landlord must give the tenant a receipt for rent paid in cash." I note that although the landlords may be in contravention of the Regulation by failing to provide receipts, I am not satisfied that the tenant had established that the tenant's inability to pay the monthly rent was due to the landlords' actions, specifically the lack of receipts. I find that prior to April 2022, the tenant was able to pay the monthly rent even though the landlords had never provided receipts for rent payments. In fact, I note that the landlords had provided evidence to show that they had agreed to assist the tenant in filling out the required the paperwork to obtain their subsidy.

**Section 26** of the *Act*, in part, states as follows:

#### **Rules about payment and non-payment of rent**

- 26** (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I find that the landlords' 10 Day Notice complies with section 52 of the *Act*. I am also satisfied that the tenant has failed to pay the outstanding rent for the months of May 2022 through to September 2022. Although the tenant did pay \$700.00 on May 4, 2022, I find that this payment only satisfied the remaining outstanding rent for April 2022. I

therefore find that the landlords are entitled to a two (2) day Order of Possession against the tenant, pursuant to section 55 of the *Act*.

I allow the landlords to recover the unpaid rent for the months of May 2022 to September 2022. The landlords will be provided with a monetary order in the amount of \$7,000.00.

The landlords continue to hold the tenant's security deposit of \$700.00. 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 claim.

### **Conclusion**

I find that the landlords' 10 day Notice is valid and effective as of May 17, 2022.

I grant an Order of Possession to the landlords effective two **days after service of this Order** on the tenant. Should the tenant and any occupant of this original rental agreement fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I allow the landlords' monetary claim as set out in the table below. 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 claim. The landlord is issued a monetary order in the amount of \$6,300.00.

Unpaid Rent for May 2022 to September 2022 (5 months x \$1,400.00)	\$7,000.00
Less Security Deposit Held	-700.00
<b>Total Monetary Order</b>	<b>\$6,300.00</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: October 22, 2022

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Residential Tenancy Branch