



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR-DR, MNR-DR, FFL

### Introduction

This hearing originated as a Direct Request proceeding. In an Interim Decision dated June 8, 2022 a participatory hearing was ordered. 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 tenants, pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:14 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 11:00 a.m. The landlord attended the hearing and was 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 and I were the only ones who had called into this teleconference.

The landlord was advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. The landlord testified that she was not recording this dispute resolution hearing.

Per section 95(3) of the *Act*, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

The landlord confirmed her email address for service of this decision and orders.

#### Preliminary Issue- Service

The Interim Decision states:

Notices of Reconvened Hearing are enclosed with this interim decision. The applicant must serve the Notice of Reconvened Hearing, the interim decision, and Page: 3 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 were served on the tenant via registered mail on June 9, 2022. A Canada Post registered mail receipt stating same was entered into evidence. The landlord testified that the tenant did not pick up the package. I find that the tenant was deemed served with the above documents on June 14, 2022, five days after their registered mailing, in accordance with sections 89 and 90 of the Act.

#### Preliminary Issue- Jurisdiction

The Interim Decision states:

Section 4 of the Act establishes that living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation is not governed by the Act.

I find that tenant's address and the landlord's address on the tenancy agreement are identical. The Application for Dispute Resolution states that the tenant is renting the lower portion of the address while the landlord resides in the upper portion. However, the tenancy agreement includes a vacate clause indicating that the "owner might need the room back."

I find I am not able to determine whether the tenant has access to their own bathroom or kitchen facilities or whether the landlord is the owner of the accommodation being rented out.

For this reason, I find that there is a question regarding whether I have jurisdiction to decide this matter. I find that a participatory hearing is required in order to determine jurisdiction.

The landlord testified that the tenant rents a self-contained suite and that the tenant does not have access to the landlord's suite above. The landlord testified that she does not share a kitchen or a bathroom with the tenant, the tenant does not have any access to her suite and the tenant has his own private entrance to his suite.

I accept the landlord's undisputed testimony that the tenant rents a self-contained suite and that the landlord does not share a kitchen or a bathroom with the tenant. I therefore find that I have jurisdiction to hear the landlord's application.

#### Issues to be Decided

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 tenants, pursuant to section 72 of the *Act*?

#### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the landlord, not all details of her 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 May 19, 2020 and the tenant is still residing in the subject rental property. Monthly rent in the amount of \$700.00 is payable on the first day of each month.

The landlord testified that a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") was posted on the tenant's door on April 24, 2022. A witnessed proof of service document stating same was entered into evidence.

The Notice was entered into evidence, is signed by the landlord, is dated April 24, 2022, gives the address of the rental unit, states that the effect date of the notice is May 4, 2022, is in the approved form, #RTB-30, and states that the landlord is ending the tenancy because the tenant failed to pay rent in the amount of \$900.00 that was due on April 1, 2022.

The tenant did not dispute the Notice.

The landlord testified that the tenant paid \$500.00 towards March 2022's rent and has not paid any rent since then.

The landlord's application for dispute resolution seeks a monetary order in the amount of \$900.00 for March and April 2022's rent and \$100.00 for the filing fee.

### Analysis

Based on the landlord's testimony and the witnessed proof of service document in evidence, I find that the Notice was deemed served on the tenant on April 27, 2022, three days after its posting, in accordance with section 88 of the *Act*.

Section 53(2) of the *Act* states that if the effective date stated in the notice 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) is May 7, 2022. I find that the corrected effective date of the Notice is May 7, 2022.

Section 46(1) of the *Act* states that a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

Section 46(4) of the *Act* states that within 5 days after receiving a notice under this section, the tenant may

- (a) pay the overdue rent, in which case the notice has no effect, or
- (b) dispute the notice by making an application for dispute resolution.

Section 46(5) of the *Act* states that if a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by that date.

Based on the undisputed evidence of the landlord, I find that the tenant only paid \$500.00 towards March 2022's rent, did not pay any rent for April 2022 and did not pay any rent within five days of receiving the Notice. The tenant did not make an application pursuant to section 46(4) of the *Act* within five days of receiving the Notice. In accordance with section 46(5) of the *Act*, the tenant's failure to pay the outstanding rent or file to dispute the Notice within five days of receipt of the Notice led to the end of his tenancy on the corrected effective date of the notice, that being May 7, 2022.

As the tenant has not vacated the subject rental property, 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 \$700.00 on the first day of each month. Based on the 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 landlord \$900.00 in unpaid rent from March to April 2022.

In the hearing the landlord testified that no compensation has been paid for the tenant's occupation of the subject rental property from May 2022 to the present date. Compensation for overholding was not claimed in this application for dispute resolution. The landlord is at liberty to file another claim with the Residential Tenancy Branch for damages for overholding.

As the landlord was successful in this application, I find that the landlord is 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 \$1,000.00.

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: October 07, 2022

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Residential Tenancy Branch