



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **OPC, MNRL**

### Introduction

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

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

Both parties attended the hearing and were given an opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlords were assisted by a family member.

In accordance with the *Act*, Residential Tenancy Rule of Procedure 6.1 and 7.17 and the principles of fairness and the Branch's objective of fair, efficient and consistent dispute resolution process parties were given an opportunity to make submissions and present evidence related to the claim. The parties were directed to make succinct submissions, and pursuant to my authority under Rule 7.17 were directed against making unnecessary submissions or remarks not related to the matter at hand.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The tenant testified that they received the landlord's materials and had not served any materials of their own. Based on their testimonies I find the tenant duly served in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Are the landlords entitled to the relief sought?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agree on the following facts. This periodic tenancy began on August 1, 2021. The monthly rent is \$1,850.00 payable on the first of each month. A security deposit of \$925.00 was collected and is still held by the landlord. The tenant failed to pay the full rent by the first for November and December 2021 and January, February, March, April and May 2022. The tenant made partial payment of \$1,000.00 for May 2022 and has not paid any rent thereafter.

The landlords issued a 1 Month Notice dated May 20, 2022. The reason provided on the notice for the tenancy to end is that the tenant has been repeatedly late in paying rent. The tenant confirmed receipt of the notice and that they have not filed an application to dispute the notice with the Branch.

The landlords calculate the total arrear for this tenancy as at the date of the hearing to be \$10,100.00. The tenant confirms that they have not paid the full amount of rent for May 2022 and have paid no rent thereafter but submits that the arrear should be \$6,000.00 as they believe the rental unit was insufficiently heated at some point during the tenancy.

The tenant complained that the landlord did not offer them an opportunity to discuss resolution prior to the hearing, testified about the dissolution of their marriage and complained about the landlords and the condition of the rental unit.

Analysis

Section 47(4) of the *Act* provides that upon receipt of a notice to end tenancy for cause, the tenant may, within 10 days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch.

I accept the undisputed evidence of the parties that the tenant received the 1 Month Notice of May 20, 2022 on June 10, 2022. I accept that the tenant, after being served with the notice, did not file an application for dispute resolution within 10 days of service or at all. Accordingly, I find that the tenant is conclusively presumed under section 47(5) of the Act to have accepted that the tenancy ends on the corrected effective date of the 1 Month Notice, July 31, 2022.

I accept the evidence of both parties that the tenant has been late in paying the rent for this tenancy on November and December 2021, January, February, March and April 2022. Pursuant to Policy Guideline 38 I find that 3 late payments constitutes repeated late payments giving rise to a basis for the tenancy to end.

Accordingly, I issue an Order of Possession in the landlords' favour. As the effective date of the notice has passed I issue an Order enforceable 2 days after service on the tenant.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I accept the undisputed evidence of both parties that the tenant failed to pay full rent for May 2022 and has not paid any amount thereafter. Based on the agreed upon figure of monthly rent of \$1,850.00, I accept the landlord's calculation that the total arrear for this tenancy is \$10,100.00.

I do not find the tenant's submissions to have any merit. I find their complaints about heat in the rental unit to not be supported in any documentary evidence, have little air of reality and in any event would not give rise to a basis to withhold the rent payable under the tenancy agreement.

Accordingly, I issue a monetary award in the landlords' favour for \$10,100.00. In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the

landlords to retain the tenant's security deposit in partial satisfaction of the monetary award issued in the landlord's favour.

### Conclusion

I grant an Order of Possession to the landlords effective **2 days after service on the tenants**. Should the tenant or any occupant 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 monetary order in the landlords' favour in the amount of \$9,175.00, representing the rental arrear for this tenancy less the security deposit. 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 24, 2022

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Residential Tenancy Branch