



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"), pursuant to section 46.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:40 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. The landlord, the landlord's son and the landlord's agent attended the hearing and were 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, the landlord's son and the landlord's agent and I were the only ones who had called into this teleconference.

The landlord's agent confirmed the landlord's email address for service of this Decision and Orders.

### Preliminary Issue- Service

The landlord testified that the tenant served him with the tenant's application for dispute resolution via registered mail. I find that the landlord was served in accordance with section 89 of the *Act*.

The agent testified that the tenant was served with the landlord's evidence via registered mail on October 4, 2022. The landlord entered into evidence a Canada Post registered mail receipt for same. I find that the tenant was served with the landlord's evidence in accordance with section 88 of the *Act*.

### Preliminary Issue- Failure to Attend

Rule 7 of the Residential Tenancy Branch Rules of Procedure provides in part as follows:

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. 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.

The tenant failed to attend this hearing. Pursuant to Rule 7 of the Residential Tenancy Branch Rules of Procedure, I dismiss the tenant's application without leave to reapply.

Section 55(1) and section 55(1.1) of the *Act* states that if the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice, the director must grant the landlord an order of possession and an order requiring the payment of the unpaid rent.

### Issues

1. Is the landlord entitled to an Order of Possession for unpaid rent?
2. Is the landlord entitled to a Monetary Order for unpaid rent?

### Background/Evidence

While I have turned my mind to the documentary evidence and the testimony of the landlord, the landlord's son and the landlord's agent, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The agent provided the following undisputed testimony. This tenancy began on November 1, 2020. Monthly rent in the amount of \$3,700.00 is payable on the first day of each month. A security deposit of \$1,850.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The landlord testified that the tenant paid a partial payment of \$2,000.00 towards June 2022's rent, via e-transfer, on June 2, 2022 which was deposited on June 3, 2022. The landlord testified that the tenant has not paid any rent since the aforementioned payment.

The landlord testified that he personally served the tenant with the Notice on June 10, 2022. The landlord's son testified that he witnessed the above service on June 10, 2022. The tenant filed to dispute the Notice on June 10, 2022.

The Notice was entered into evidence, is signed by the landlord, is dated June 10, 2022, gives the address of the rental unit, states that the effect date of the notice is June 20, 2022, is in the approved form, #RTB-30, and states the following ground for ending the tenancy:

You have failed to pay rent in the amount of \$1,700.00 due on June 1, 2022.

### Analysis

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.

Based on the undisputed testimony of the landlord and the landlord's son as well as the date the tenant filed to dispute the Notice (same day as the service testified to by the landlord and the landlord's son), I find that tenant was personally served with the Notice on June 10, 2022. I accept the landlord's undisputed testimony that the tenant has not paid any rent since the \$2,000.00 payment received on June 2, 2022 and deposited on June 3, 2022. As the tenant did not pay the overdue rent within five days of receiving the Notice, I uphold the Notice.

Section 55(1) and section 55(1.1) of the *Act* state:

**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.

Upon review of the Notice, I find that it meets the form and content requirements of section 52 of the *Act* because it:

- is signed and dated by the landlord,
- gives the address of the subject rental property,
- state the effective date of the notice,
- states the ground for ending the tenancy, and
- is in the approved form, RTB Form #30.

Since I have dismissed the tenant's application, upheld the Notice and found that the Notice meets the form and content requirements of section 52 of the *Act*, the landlord is entitled to a two-day Order of Possession pursuant to section 55(1) of the *Act*.

Since I have dismissed the tenant's application, upheld the Notice and found that the Notice meets the form and content requirements of section 52 of the *Act*, the landlord is entitled to a Monetary Order for unpaid rent pursuant to section 55(1.1) of the *Act*.

Residential Tenancy Guideline #3 states:

Compensation for overholding under section 57 of the RTA (section 50 of the MHPTA) is not considered rent since overholding only occurs after a tenancy has ended....

If a tenant has not vacated or abandoned the unit, or the conclusive presumption does not apply, (in other words the right of possession of the rental unit or manufactured home site is in issue at the dispute resolution hearing), the director

will usually rely on section 68(2) of the RTA (section 61(2) of the MHPTA) to order that the date the tenancy ends is the date of the dispute resolution hearing, rather than the effective date shown on the notice to end tenancy. If the director is satisfied upon reviewing submitted materials and hearing evidence as to an amount of unpaid rent owing, including rent owing since the time the notice to end tenancy was issued, the director must grant an order to the landlord for the amount of unpaid rent found to be owing.

Pursuant to Residential Tenancy Policy Guideline #3 and section 68(2) of the *Act*, I order that the tenancy ends today, October 28, 2022 and that the landlord is entitled to unpaid rent from June 1, 2022 to October 28, 2022. If the landlord suffers further loss due to the tenant overholding, the landlord is at liberty to file an application for dispute resolution seeking damages for overholding. I find that the landlord is entitled to rent from June 2022 to September 2022 in the amount of \$12,800.00, comprised as follows:

- June 2022: \$1,700.00,
- July 2022: \$3,700.00,
- August 2022: \$3,700.00, and
- September 2022: \$3,700.00.

I find that the landlord is entitled to per diem rent for October 1, 2022 to October 28, 2022 pursuant to the following calculation:

$$\$3,700.00 \text{ (rent)} / 31 \text{ (days in October 2022)} = \$119.355 * 28 \text{ (days tenancy ongoing in October 2022)} = \$3,341.94.$$

Section 72(2) of the *Act* states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit due to the tenant. I find that the landlord is entitled to retain the tenant's entire security deposit in the amount of \$1,850.00 in part satisfaction of the landlord's monetary claim.

### 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 and all other occupants 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 under the following terms:

<b>Item</b>	<b>Amount</b>
June 2022 unpaid rent	\$1,700.00
July 2022 unpaid rent	\$3,700.00
August 2022 unpaid rent	\$3,700.00
September 2022 unpaid rent	\$3,700.00
October 1-28, 2022 unpaid rent	\$3,341.94
Less security deposit	-\$1,850.00
<b>TOTAL</b>	<b>\$14,291.94</b>

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 28, 2022

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Residential Tenancy Branch