



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding FORT NELSON REALTY LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNRL-S, FFL

### Introduction

This hearing dealt with the Landlord's application under the *Residential Tenancy Act* (the "Act") for:

- an Order of Possession under a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated August 8, 2022 (the "10 Day Notice") pursuant to section 55;
- a Monetary Order of \$375.00 for unpaid rent pursuant to section 67, and to keep the Tenant's security and/or pet damage deposit pursuant to section 72(2)(b); and
- authorization to recover the filing fee for this application from the Tenant pursuant to section 72.

The Landlord's agents SH and KB attended this hearing. They were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The Tenant did not attend this hearing. I left the teleconference hearing connection open until 9:47 am in order to enable the Tenant to call into the hearing scheduled to start at 9:30 am. I confirmed that the correct call-in numbers and participant access code had been provided in the notice of dispute resolution proceeding. I used the teleconference system to confirm that the Landlord's agents and I were the only ones who had called into the hearing.

All attendees were advised that the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure") prohibit unauthorized recordings of dispute resolution hearings.

### Preliminary Matter – Service of Dispute Resolution Documents

The Landlord's agents confirmed that a package with the notice of dispute resolution proceeding package and the Landlord's evidence (the "NDRP Package") was posted to the Tenant's door on September 2, 2022. The Landlord submitted a signed and witnessed proof of service form in support.

Section 89(2)(d) of the Act permits an application by a landlord under section 55 of the Act [*order of possession for the landlord*] to be given to the tenant by attaching a copy to a door or other conspicuous place at the address at which the tenant resides.

An application for something other than an order of possession needs to be served in accordance with section 89(1) of the Act, which states:

#### **Special rules for certain documents**

89(1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*];
- (f) by any other means of service provided for in the regulations.

I find the Tenant was served with the NDRP Package with respect to the Landlord's claim for an order of possession in accordance with sections 89(2)(d) and 88(g) of the Act. Pursuant to section 90(c) of the Act, I find the Tenant is deemed to have received the NDRP Package on September 5, 2022, or three days after attaching to the door.

I find the Act does not permit the Landlord to serve the Tenant with an application regarding unpaid rent by posting a copy to the Tenant's door. As such, I find this portion

of the Landlord's application has not been served in accordance with the Act. The Landlord's claim for unpaid rent and to retain the Tenant's security deposit and/or damage deposit is therefore dismissed with leave to re-apply.

### Preliminary Matter – Tenant's Non-attendance

Rule 7.3 of the Rules of Procedure states:

#### **7.3 Consequences of not attending the hearing**

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.

Having found the Tenant to be duly served with notice of this hearing, I directed that this hearing be conducted in the Tenant's absence.

### Issues to be Decided

1. Is the Landlord entitled to an Order of Possession?
2. Is the Landlord entitled to recover the filing fee?

### Background and Evidence

This tenancy commenced on May 1, 2022 and is month-to-month. Rent is \$750.00 due on the first day of each month. The Tenant paid a security deposit and pet damage deposit of \$375.00 each, which are held by the Landlord.

A copy of the tenancy agreement has been submitted into evidence. The Landlord's agents explained that the Tenant had her boyfriend ND move into the rental unit. The Landlords' agents testified that the Tenant never initialled the changes in the tenancy agreement to add ND as a tenant.

The Landlord also submitted a copy of the 10 Day Notice. The 10 Day Notice is signed by SH on behalf of the Landlord and has an effective date of August 18, 2022. It states that the Tenant failed to pay rent of \$2,300.00 due on August 1, 2022.

The Landlord's evidence includes a signed proof of service form which indicates that a copy of the 10 Day Notice was received by ND in person on behalf of the Tenant on August 8, 2022.

In addition, the Landlord had submitted a monetary order worksheet which explains that the Tenant did not pay rent from June to August 2022 and owed a \$50.00 balance from May 2022.

The Landlords' agents testified that they have since received payments for use and occupancy from ND, as follows:

- \$1,000.00 paid on September 22, 2022
- \$1,300.00 paid on September 23, 2022
- \$750.00 paid on October 26, 2022
- \$750.00 paid on November 28, 2022

The Landlords' agents testified that the Tenant still owes a balance of \$815.00 in unpaid rent. They confirmed that the rental unit is being occupied by ND.

### Analysis

#### *1. Is the Landlord entitled to an Order of Possession?*

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

If a tenant does not pay rent when due, section 46 of the Act permits a landlord to take steps to end a tenancy by issuing a notice to end tenancy for unpaid rent.

Section 46(2) of the Act requires that a 10 day notice to end tenancy must comply with section 52 of the Act, which states:

#### **Form and content of notice to end tenancy**

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,

- (d) except for a notice under section 45(1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy,
- (d.1) for a notice under section 45.1 *[tenant's notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 *[confirmation of eligibility]*, and
- (e) when given by a landlord, be in the approved form.

I have reviewed the 10 Day Notice and note there is a slight variation and typographical error with the Landlord's name as stated on the 10 Day Notice. However, I find this would be information known by the Tenant and that it would be reasonable to correct the Landlord's name under section 68(1) of the Act. I find the 10 Day Notice otherwise complies with the requirements of section 52 in form and content.

Based on the Landlord's undisputed evidence, I find the Tenant was served with the 10 Day Notice on August 8, 2022 in accordance with section 88(e) of the Act.

Section 46(4)(b) of the Act permits a tenant to pay the overdue rent or make an application to dispute a 10 day notice to end tenancy within 5 days of receiving such notice. In this case, the Tenant had until August 13, 2022 to pay the overdue rent or dispute the 10 Day Notice.

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 by that date.

Furthermore, sections 55(2)(b) and 55(4)(a) of the Act state as follows:

**Order of possession for the landlord**

55 [...]

(2) A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:

[...]

(b) a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired; [...]

[...]

- (4) In the circumstances described in subsection (2) (b), the director may, without any further dispute resolution process under Part 5 *[Resolving Disputes]*,  
(a) grant an order of possession, [...]

Based on the Landlord's undisputed evidence, I find the 10 Day Notice was served on August 8, 2022, the time for paying the overdue rent or disputing the 10 Day Notice expired on August 13, 2022, and the Tenant did not pay the overdue rent or make an application for dispute resolution by that date. I find the Tenant is conclusively presumed to have accepted that the tenancy ended on August 18, 2022, the effective date of the 10 Day Notice.

I conclude the Landlord is entitled to an Order of Possession under section 55(4)(a) of the Act.

Since the effective date of the 10 Day Notice has already passed, I grant an Order of Possession to the Landlord effective two (2) days after service of the Order upon the Tenant.

*2. Is the Landlord entitled to recover the filing fee?*

The Landlord has been successful in this application. I grant the Landlord's claim for recovery of the \$100.00 filing fee under section 72(1) of the Act.

Pursuant to section 72(2)(b) of the Act, I authorize the Landlord to retain \$100.00 from the Tenant's security deposit and/or pet damage deposit in full satisfaction of the filing fee awarded in this application.

Conclusion

Pursuant to section 55(4)(a) of the Act, I grant an Order of Possession to the Landlord effective **two (2) days** after service upon the Tenant. This Order may be served on the Tenant, filed in the Supreme Court of British Columbia, and enforced as an Order of that Court.

Pursuant to section 72(2)(b) of the Act, the Landlord is authorized to retain **\$100.00** from the Tenant's security deposit and/or pet damage deposit in full satisfaction of the filing fee awarded in this application. The balance of the Tenant's security and pet

damage deposits shall be dealt in accordance with the Act, the regulation, and the parties' tenancy agreement.

The Landlord's claim for unpaid rent and to retain the Tenant's security deposit and/or damage deposit is dismissed with leave to re-apply.

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: November 29, 2022

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Residential Tenancy Branch