



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPC MNRL-S FFL

### Introduction

This hearing dealt with a landlord's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) to obtain an order of possession based on an undisputed 1 Month Notice to End Tenancy for Cause dated May 10, 2022, for a monetary claim of \$1,287.46 for rent arrears and for the filing fee.

The landlord and an agent for the landlord, AP (agent) attended the teleconference hearing. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of their testimony is provided below and includes only that which is relevant to the hearing. Words utilizing the singular shall also include the plural and vice versa where the context requires.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing dated July 12, 2022 (Notice of Hearing), application and documentary evidence (Hearing Package) were considered. The agent provided affirmed testimony that the Hearing Package was served on the tenant by posting the door of the tenant on July 13, 2022. Documents posted to the door are deemed served 3 days after they are posted pursuant to section 90 of the Act. Given the above, and without any evidence to prove to the contrary, I find the tenant was deemed served on July 16, 2022 with the Hearing Package. The agent testified that the tenant continues to reside in the rental unit.

### Preliminary and Procedural Matters

The agent testified that in addition to the rent owed for March, April, May and June as claimed, the tenant has subsequently not paid the rent as follows:

1. July 2022, \$1,205.27 rent owing
2. August 2022, \$1,205.27 rent owing

3. September 2022, \$17.62 rent owing
4. October 2022, \$717.62 rent owing
5. November 2022, \$1,205.27 rent owing

As a result, the landlord requested to amend the application to include rent owed above for a total amount of rent arrears of \$9,172.13. The landlord also stated that the tenant continues to occupy the rental unit. I find that this request to amend the application does not prejudice the respondent tenant as the tenant would be aware or ought to be aware that rent is due pursuant to the tenancy agreement. Therefore, I amend the application pursuant to section 64(3)(c) of the Act, to \$9,172.13, which I will address later in this Decision.

In addition to the above, the landlord confirmed their email address and stated that they did not have an email address for the tenant.

As the tenant continues to occupy the rental unit, I will not consider the security deposit at this proceeding as the tenant has one year from the date they vacate the rental unit to serve the landlord with their written forwarding address.

#### Issues to be Decided

- Is the landlord entitled to an order of possession under the Act?
- Is the landlord entitled to unpaid rent and loss of rent under the Act?
- Is the landlord entitled to the recovery of the cost of the filing fee under the Act?

#### Background and Evidence

The agent testified that although a tenancy agreement does exist, it was lost and could not be submitted in evidence as a result. The agent testified that the tenancy began on November 16, 2016, and that current monthly rent as of the time of the application is \$1,205.27 and that rent increases were issued in accordance with the Act.

The landlord and agent confirmed the following rent owing as of the date of the hearing, November 8, 2022 as follows:

Month and Year	Rent Paid	Rent Owing
March 2022	\$0	\$1,205.27
April 2022	\$0	\$1,205.27
May 2022	\$0	\$1,205.27

June 2022	\$0	\$1,205.27
July 2022	\$0	\$1,205.27
August 2022	\$0	\$1,205.27
September 2022	\$1,187.65	\$17.62
October 2022	\$487.65	\$717.62
November 2022	\$0	\$1,205.27
<b>TOTAL RENT OWING</b>		<b>\$9,172.13</b>

The agent testified that the landlord served the 1 Month Notice on the tenant by posting to their door on May 10, 2022. The agent testified that the tenant did not dispute the 1 Month Notice and failed to vacate by the effective vacancy date listed on the 1 Month Notice, June 10, 2022. The effective vacancy date automatically corrects under section 53 of the Act to June 30, 2022 as monthly rent is due on the first day of each month.

The cause listed on the 1 Month Notice states as follows:

**Tenant is repeatedly late paying rent**

The Details of Cause(s) section of the 1 Month Notice states the following:

Details of Cause(s): Describe what, where and who caused the issue and include dates/times, names etc. This information is required. An arbitrator may cancel the notice if details are not provided.

Details of the Event(s):

Tamara has repeatedly Not paid the monthly rental for 911 McClure.

Tamara has also repeatedly Not paid the rent months in a row, March, April, May have all been Missed, and there has been zero communication. I tried calling, knocking on door, left hand written notes, but never heard back.

The landlord is seeking a two-day order of possession and a monetary order for rent arrears and the filing fee.

### Analysis

Based on the undisputed documentary evidence and the undisputed testimony provided during the hearing, and on the balance of probabilities, I find the following.

**Order of possession** – I find that the tenant was deemed served with the 1 Month Notice on May 13, 2022, which is 3 days after the 1 Month Notice was posted to the tenant's door. I accept that the tenant did not dispute the 1 Month Notice within 10 days of receiving the 1 Month Notice. Therefore, I find the tenant is conclusively presumed pursuant to section 47 of the Act, to have accepted that the tenancy ended on the corrected effective vacancy date of the 1 Month Notice, June 30, 2022. Accordingly, I grant the landlord an order of possession **effective two (2) days** after service on the tenant.

Section 26 of the Act requires that rent be paid in accordance with the tenancy agreement. I accept the undisputed testimony of the landlord and agent that the tenant owes a total of \$9,172.13 in unpaid rent and loss of rent as per the table above.

As the landlord's application had merit, I grant the landlord the recovery of the filing fee in the amount of **\$100**. Based on the above and pursuant to section 67 of the Act, I grant the landlord a monetary order in the amount of **\$9,272.13**, which includes unpaid rent, loss of rent and the filing fee.

### Conclusion

The landlord's application is fully successful. The tenancy ended on June 30, 2022.

The landlord is granted an order of possession effective two (2) days after service on the tenant. The landlord must serve the tenant with the order of possession before it can be enforced in the Supreme Court of British Columbia. The tenant is reminded that they can be held liable for all costs related to enforcement of the order of possession including court and bailiff fees.

The landlord is granted a monetary order in the amount of **\$9,272.13**, which includes unpaid rent, loss of rent and the filing fee as indicated above. The tenant is reminded that they can be held liable for all costs related to enforcement of the monetary order including court fees.

This Decision will be emailed to the landlord and sent by regular mail to the tenant.

The order of possession and monetary order will be emailed to the landlord only for service on the tenant.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 8, 2022

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Residential Tenancy Branch