



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      **OPR MNRL-S FFL**

### Introduction

This hearing was convened as a result of the Landlord's application for dispute resolution ("Application") under the *Residential Tenancy Act* (the "Act") for:

- an Order of Possession for non-payment of rent pursuant to sections 46 and 55;
- a monetary order for unpaid rent and/or utilities pursuant to section 55;
- authorization to keep the Tenant's security and/or pet damage deposit(s) pursuant to section 38; and
- authorization to recover the filing fee for the Application from the Tenant pursuant to section 72.

The Landlord's agents ("DP" and "LM") and the Tenant attended this hearing. I explained the hearing process to the parties who did not have questions when asked. I told the parties they were not allowed to record the hearing pursuant to the *Residential Tenancy Branch Rules of Procedure* ("RoP"). The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

LM stated the Notice of Dispute Resolution Proceeding and most of the Landlord's evidence (collectively the "NDRP Package") was served on the Tenant by registered mail on July 7, 2022. LM provided the Canada Post tracking number for service of the NDRP Package on the Tenant to corroborate her testimony. The Tenant acknowledged he received the NDRP Package. I find the NDRP Package was served on the Tenant in accordance with sections 88 and 89 of the Act.

LM stated the Landlord served additional evidence on the Tenant by registered mail on October 13, 2022. LM provided the Canada Post tracking number for service of the Landlord's additional evidence on the Tenant. I find the Landlord's additional evidence was served on the Tenant pursuant to the provisions of section 88 of the Act.

The Tenant stated he did not serve any evidence on the Landlord for this proceeding.

### Issues to be Decided

Is the Landlord entitled to:

- an Order of Possession for non-payment of rent?
- a monetary order for unpaid rent and/or utilities?
- keep the Tenant's security and/or pet damage deposit(s)?
- recover the filing fee for the Application from the Tenant?

### Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Application are set out below.

LM submitted into evidence a copy of a tenancy agreement dated January 22, 2013 ("Tenancy Agreement") between a predecessor landlord ("DRG") and the Tenant. DP stated the Landlord purchased the residential property in which the rental unit is located from DRG four or five years ago. The Tenancy Agreement states the tenancy commenced on February 1, 2013, for a fixed term ending January 31, 2014, with rent of \$1,050.00 payable on the 1<sup>st</sup> day of each month. The Tenant was required to pay a security deposit of \$525.00 by January 22, 2013. The parties agreed the rent is now \$1,293.70. LM stated the Tenant paid the deposit and the Landlord is holding it in trust for the Tenant.

LM submitted into evidence a copy of a Ten Day Notice to End Tenancy for Unpaid Rent and/or Utilities dated May 20, 2022 ("10 Day Notice"). LM stated the 10 Day Notice was served on the Tenant by registered mail on May 20, 2022. LM submitted into evidence a copy of the Canada Post receipt with the tracking number for service of the

10 Day Notice to corroborate her testimony. I find the 10 Day Notice was served on the Tenant in accordance with the provisions of section 88 of the Act.

The 10 Day Notice stated the Tenant had rental arrears of \$573.77 as of May 1, 2022. The 10 Day Notice had an effective date for the Tenant to move out of the rental unit on June 6, 2022. When I asked, the Tenant stated he made an application for dispute resolution to dispute the 10 Day Notice. LM stated she was unaware of the Tenant making an application to dispute the 10 Day Notice. LM submitted into evidence a signed copy of a Repayment Plan on Form RTB-14 dated August 24, 2020 ("Repayment Plan"). The Repayment Plan disclosed the Tenant had total rental arrears of \$773.00. LM stated the rental arrears accrued from April 1, 2020 through to August 1, 2020 during the provincial moratorium on rent payments due to COVID-19 that was in place from March 18, 2020 through to August 17, 2020. The Repayment Plan stated the rental arrears of \$773.77 accrued from April 1, 202 through to August 1, 2022 as follows:

<b>Due Date</b>	<b>Amount Due</b>	<b>Amount Paid</b>
April 1, 2020	\$1,274.59	\$1,550.00
May 1, 2020	\$1,274.59	\$600.00
June 1, 2020	\$1,274.59	\$300.00
July 1, 2020	\$1,274.59	\$1,574.59
August 1, 2020	\$1,274.59	\$1,574.59

The Repayment Plan required the Tenant to pay \$77.38 on the 1st day of each of the months of October 2020 through to July 2021 inclusive as follows:

<b>Installment Due Date</b>	<b>Installment Payment Due</b>
October 1, 2020	\$77.38
November 1, 2020	\$77.38
December 1, 2020	\$77.38
January 1, 2021	\$77.38
February 1, 2021	\$77.38
March 1, 2021	\$77.38
April 1, 2021	\$77.38
May 1, 2021	\$77.38
June 1, 2021	\$77.38
July 1, 2021	\$77.38
<b>Total:</b>	<b>\$773.77</b>

LM stated the Tenant did not make any of the scheduled payments set out in the Repayment Plan. The Ledger indicated that, but for the \$773.77 arising from the unpaid installments, the Tenant paid the monthly rent for each of the months of October 2000 through to October 1, 2022. LM submitted into evidence a ledger ("Ledger") for the Tenant covering the period February 1, 2022 through to October 1, 2022 that provided details of each month the rent came due together with every payment made by the Tenant during that time. LM stated the Landlord gave the Tenant a \$200.00 discount as a goodwill gesture leaving a balance of \$573.77. LM submitted into evidence a summary statement of the rental arrears which stated that, after deduction of the \$200.00 discount the Landlord gave the Tenant, the Tenant had rental arrears of \$573.77 as stated on the 10 Day Notice.

The Ledger indicated that, after service of the 10 Day Notice, the Tenant made payments of \$1,293.70 for each of the months of June through October 2022 inclusive. I noted that the Landlord did not submit any payment receipts, or other evidence of payment of rent by the Tenant, that were endorsed with "for use and occupancy only". Neither DP or LM were able to confirm whether the Tenant was given a written notice on the payment receipt, or other evidence of payment of the rent, that the receipt of the rent payments for each June through October 2022 from the Tenant were for "use and occupancy only".

The Tenant stated the Landlord made an application for dispute resolution to seek an Order of Possession in connection with a previous Ten Day Notice to End Tenancy for Unpaid Rent and/or Utilities ("Previous 10 Day Notice") the Landlord served on him. The Tenant stated the decision of the arbitrator who presided over the hearing ("Previous Hearing") documented a settlement ("Settlement") between the parties as follows:

1. Both parties agreed that this tenancy will continue until it is ended in accordance with the *Act*;
2. The landlord agreed that the landlord's Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, dated November 4, 2021, is cancelled and of no force or effect;
3. Both parties agreed to meet to discuss and attempt to settle any issues regarding unpaid rent from April 2020, at a date and time to be agreed upon by both parties after the hearing;

4. The landlord agreed to reapply at the RTB for a monetary order for any unpaid rent from April 2020, if both parties are unable to settle this issue, as per condition #3 above;
5. The landlord agreed that this settlement agreement constitutes a final and binding resolution of its application at this hearing, except for the filing fee.

The Tenant initially argued the settlement agreement prevented the Landlord from now claiming for the rental arrears because the parties had not yet reached a settlement on the amount of rental arrears the Tenant owed. I pointed out that paragraph 4 of the Settlement stated the Landlord could reapply for a monetary order for any unpaid rent from April 2020 if both parties are unable to settle the rental arrears. The Tenant stated that after the Previous Hearing, another building manager told him not to worry about the rental arrears.

DP stated, after the Previous Hearing, the Landlord and Tenant were unable to reach an agreement for payment of the rental arrears. DP stated the Tenant's claim that the previous property manager had told the Tenant not to worry about the rental arrears was "preposterous".

### Analysis

#### **1. Landlord's Claim for Order of Possession**

Sections 26(1) and 46(1) through 46(5) of the Act state:

- 26(1) *A tenant must pay rent when it is due* under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.
- 46(1) 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.
- (2) A notice under this section must comply with section 52 [*form and content of notice to end tenancy*].

- (3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.
- (4) 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.
- (5) 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.*

[emphasis added in italics]

The 10 Day Notice was served on the Tenant by registered mail on May 20, 2022. Pursuant to section 90 of the Act, the Tenant was deemed to have received the 10 Day Notice on May 25, 2022. Pursuant to section 46(4) of the Act, the Tenants had 5 days, or until May 30, 2022, within which to dispute the 10 Day Notice. Although the Tenant stated he disputed the 10 Day Notice, the records of the RTB do not disclose the Tenant made any application for dispute resolution to dispute the 10 Day Notice. LM stated the Landlord was not aware of the Tenant disputing the 10 Day Notice. I find that, on a balance of probabilities, the Tenant did not make an application for dispute resolution to dispute the 10 Day Notice. As the Tenant did not dispute the 10 Day Notice, section 46(5) of the Act stipulates that the Tenant was conclusively presumed to have accepted that the tenancy ended on the effective date of 10 Day Notice, being June 6, 2022.

LM testified the Tenant had rental arrears of \$573.77 as of May 1, 2022, after deducting \$200.00 for a goodwill discount from the \$773.77 that was unpaid by the Tenant pursuant to the Repayment Plan. LM submitted a copy of the Repayment Plan and the Ledger to corroborate her testimony on the amount of the rental arrears owed by the Tenant. The Tenant did not submit any evidence whatsoever, such as payment receipts, cancelled cheques or e-transfers, to support his claim that all of his rent has been paid and that he does not have any rental arrears. The Tenant stated a previous property manager told him not to worry about the rental arrears following the Previous Hearing. DP stated the Landlord was unable to reach a resolution with the Tenant for

payment of the rental arrears of \$573.77. DP denied a previous manager had told the Tenant not to worry about the rental arrears.

The Tenant argued the Settlement prevented the Landlord from proceeding to seek an Order of Possession and monetary order pursuant to the 10 Day Notice. Paragraph 4 of the Settlement stated the landlord agreed to reapply at the RTB for a monetary order for any unpaid rent from April 2020, if both parties are unable to settle this issue. More than two months passed after the date of the Previous Decision. I find that, based on the evidence of the parties, a resolution on the payment of the rental arrears of \$573.77 was never reached between the parties. As such, I find the Landlord was entitled, pursuant to paragraph 4 of the Settlement, to serve the Tenant with the 10 Day Notice. The Tenant did not submit any evidence whatsoever that would support a claim that he had the right under the Act to deduct all or a portion of the rent. The Tenant did not submit any evidence or call a witness to corroborate his testimony that a prior manager told him not to worry about the rental arrears. I find that, based on a balance of probabilities, the rental arrears of \$573.77 were not forgiven by an agent of the Landlord.

Based on the testimony of DP and LM, and the evidence submitted by the Landlord, I find the Landlord has established, on a balance of probabilities, the Tenant owed the Landlord \$573.77 as of May 1, 2022. Pursuant to section 26(1) of the Act, the Tenant is responsible for payment of the rent. As such, I find the 10 Day Notice was issued for a valid reason.

Sections 55(2), 55(3) and 55(4) of the Act state:

- 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:
- (a) a notice to end the tenancy has been given by the tenant;

- (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;*
- (c) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;
  - (c.1) the tenancy agreement is a sublease agreement;
  - (d) the landlord and tenant have agreed in writing that the tenancy is ended.
- (3) The director may grant an order of possession before or after the date when a tenant is required to vacate a rental unit, and the order takes effect on the date specified in the order.
- (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, and*
  - (b) *if the application is in relation to the non-payment of rent, grant an order requiring payment of that rent.*

I have reviewed the 10 Day Notice and find it complies with the section 52 form and content requirements. As such, I find the 10 Day Notice complies with the requirements of section 46(2) of the Act. Pursuant to section 46(5)(1), the tenancy ended on the effective date of the 10 Day Notice, being May 20, 2022. As such the Landlord may request an Order of Possession pursuant to section 55(4)(a). However, the Landlord continued to accept rental payments from the Tenant, after the effective date of the 10 Day Notice, for the months of June through October 2022, each of which were for the amount of current monthly rent required to be paid by the Tenant to the Landlord. The Landlord did not submit any evidence that the Landlord provided the Tenant with payment receipts, or other evidence of payment, in which the Landlord indicated the receipt of any of the rental payments made by the Tenant after May 20, 2022 were for use and occupancy only. As the Tenant continued to pay the rent in full for each month



for the months of June through October 2022, I find the Tenant had a reasonable expectation that the Landlord would not end the tenancy. Based on the foregoing, I find the Landlord is estopped from seeking an Order of Possession for the rental unit based on the 10 Day Notice because the tenancy agreement was revised on the date the Landlord accepted the payment of the rent for June 2022 from the Tenant. As such, I decline to grant the Landlord an Order of Possession pursuant to section 55(4)(a) of the Act. The tenancy continues until ended in accordance with the provisions of the Act on the same terms and conditions as the Tenancy Agreement, with rent of \$1,293.70 until increased pursuant to the provisions of the Act.

## **2. Monetary Order for Unpaid Rent:**

As noted above, I have found the 10 Day Notice was valid at the time it was served on the Tenant and that the Tenant had rental arrears of \$573.77 as set out in the 10 Day Notice. Although I have found the Landlord is estopped from seeking Order of Possession based on the 10 Day Notice, this does not vitiate the Landlord's claim for payment of the rent of \$573.77. As such, I order the Tenant to pay the Landlord the rental arrears of \$573.77 pursuant to section 55(4)(b) of the Act. A landlord is entitled to retain a security and/or pet damage deposit until the end of a tenancy in the event the landlord seeks damages to a rental unit caused by a tenant, their guests or pets. As such, instead of ordering that the security deposit be applied to the rental arrears, I grant the Landlord a monetary order requiring the Tenant pay the Landlord \$573.77 in satisfaction of the rental arrears owed to the Landlord.

## **3. Reimbursement of Landlord's Filing Fee**

As the Landlord has been partially successful in the Application, I order that the Landlord may recover the \$100.00 filing fee for the Application from the Tenant pursuant to section 72(1) of the Act.

Conclusion:

I order the Tenants pay the Landlord \$673.77, representing the following:

Description	Amount
Rental Arrears Owed to Landlord by Tenant	\$573.77
Landlord's Filing Fee for Application	\$100.00
<b>Total</b>	<b>\$673.77</b>

This Monetary Order must be served by the Landlord on the Tenant and may be enforced in Small Claims Division of the BC Provincial Court.

The Landlord is not entitled to an Order of Possession. The tenancy continues until ended in accordance with the provisions of the Act.

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 15, 2022

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Residential Tenancy Branch