



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR MNR FF

### Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution. A participatory hearing was held on December 12, 2022. The landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession based off a 10 Day Notice to End Tenancy (the Notice) for unpaid rent or utilities; and,
- a monetary order for unpaid rent or utilities.

The Landlord attended the hearing and provided affirmed testimony. The tenant did not attend the hearing. The Landlord testified that he sent the application package, Notice of Dispute Resolution Proceeding, along with his supporting evidence to the tenant on August 10, 2022, by registered mail. Proof of mailing was provided into evidence. I find the Tenant is deemed to have received this package on August 15, 2022, the fifth day after its registered mailing, pursuant to Section 90 of the *Act*.

The Landlord has requested to amend his application to include rent that has accrued since the original application date. I turn to the following Rules of Procedure (4.2):

### **Amending an application at the hearing**

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

I hereby amend the Landlord's application accordingly.

The Landlord was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Preliminary Matters – Amendment

The Landlord clarified that the Tenants legal name ends with an Ltd. rather than an Inc. The Tenancy agreement corroborates this. Accordingly, and pursuant to section 64 3(c) of the Act, I amend the Landlord's application to reflect the correct legal name of the respondent. Also, the Notice, issued by the Landlord in June of 2022, lists the Tenant's legal name as ending with Inc. rather than Ltd. I also amend that Notice, pursuant to section 68(1) of the Act, to reflect the corrected legal name of the Tenant. I find it is reasonable to amend these items, given the remainder of the Tenant's name is correct.

#### Issue(s) to be Decided

1. Is the landlord entitled to an order of possession for unpaid rent or utilities?
2. Is the landlord entitled to a monetary order for unpaid rent or utilities?

#### Background and Evidence

The Landlord testified that rent, in the amount of \$7,11.00, is due on the first day of each month, and that he holds a security deposit of \$300.00.

The Landlord testified that he issued the Notice by sending it to the Tenant's rental unit on June 13, 2022, by registered mail. Proof of mailing was provided into evidence. At that time, the Tenant owed 4 months rent, totalling \$2,844.00 (March- June 2022). Since that time, the Landlord stated the Tenant has not paid any rent, and now owes a total of 10 months rent, totalling \$7,110.00.

#### Analysis

Based on the unchallenged affirmed testimony and documentary evidence, and on a balance of probabilities, I find as follows:

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent. When a tenant does

not pay rent when due, section 46(1) of the *Act* permits a landlord to end the tenancy by issuing a notice to end tenancy. A tenant who receives a notice to end tenancy under this section has five days, under section 46(4) of the *Act*, after receipt to either pay rent in full or dispute the notice by filing an application for dispute resolution. When a tenant does not pay rent in full or dispute the notice, the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice, as per section 46(5) of the *Act*.

In this case, I find that the tenant owed past due rent at the time the Notice was issued. I note the Landlord sent the Notice by registered mail on June 13, 2022. Pursuant to section 90 of the *Act*, I find the Tenant is deemed to have received this package 5 days after it was sent, June 18, 2022.

The Tenant had 5 days to pay rent in full or file an application for dispute resolution. The Tenant did neither. As such, I find the tenant is conclusively presumed to have accepted the end of the tenancy, on the effective date of the notice. The Landlord is entitled to an order of possession, which will be effective two (2) days after it is served on the tenant.

Next, I turn to the Landlord's request for a Monetary Order for unpaid rent. After considering the evidence before me, as summarized above, I find there is sufficient evidence to demonstrate that the tenant owes and has failed to pay \$7,110.00 in past due rent.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Landlord was substantially successful in this hearing, I order the tenant to repay the \$100. Also, pursuant to sections 72 of the *Act*, I authorize that the security deposit, currently held by the Landlord, be kept and used to offset the amount of rent still owed by the Tenant. In summary, I grant the monetary order based on the following:

<b>Claim</b>	<b>Amount</b>
Cumulative unpaid rent as above	\$7,110.00
Other:	
Filing fee	\$100.00

<b>Less:</b>	(\$300.00)
Security Deposit currently held by Landlord	
<b>TOTAL:</b>	<b>\$6,910.00</b>

Conclusion

The landlord is granted an order of possession effective **two days after service** on the tenant. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

The landlord is granted a monetary order pursuant to Section 67 in the amount of **\$6,910.00**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: December 13, 2022

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Residential Tenancy Branch