



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNRL-S, FFL

### Introduction

This hearing dealt with the landlord's application, filed in July 11, 2022, pursuant to the *Residential Tenancy Act* ("Act") for:

- an order of possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent of \$10,500.00, pursuant to section 67;
- authorization to retain the tenant's security deposit of \$200.00, pursuant to section 38; and
- authorization to recover the \$100.00 filing fee paid for this application, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 19 minutes. The landlord's agent attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The hearing began at 1:30 p.m. and ended at 1:49 p.m. I monitored the teleconference line throughout this hearing. 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's agent and I were the only people who called into this teleconference.

The landlord's agent confirmed the names and spelling of his name, the landlord's name, and the tenant's name. He provided his email address for me to send this decision to the landlord after the hearing.

The landlord's agent confirmed that he had permission to represent the landlord at this hearing. He said that he provided a written authorization for same, in the landlord's

evidence. He claimed that the landlord owns the rental unit. He provided the rental unit address.

Rule 6.11 of the Residential Tenancy Branch (“RTB”) *Rules of Procedure* does not permit recordings of any RTB hearings by any participants. At the outset of this hearing, the landlord’s agent affirmed, under oath, that he would not record this hearing.

I explained the hearing process to the landlord’s agent. He had an opportunity to ask questions. He confirmed that he was ready to proceed with this hearing. He did not make any adjournment or accommodation requests.

The landlord’s agent stated that the tenant was served with the landlord’s application for dispute resolution and notice of hearing on July 22, 2022, and evidence package on October 3, 2022, both by way of registered mail to the rental unit where the tenant is still residing. The landlord provided two Canada Post receipts and the landlord’s agent confirmed both tracking numbers verbally during this hearing. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord’s application and notice of hearing on July 27, 2022, and the landlord’s evidence package on October 8, 2022, five days after each of their registered mailings.

The landlord’s agent stated that the tenant was served with the landlord’s Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, dated June 28, 2022 (“10 Day Notice”) on the same date, by way of registered mail to the rental unit where the tenant is still residing. The landlord provided a Canada Post receipt and the landlord’s agent confirmed the tracking number verbally during this hearing. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord’s 10 Day Notice on July 3, 2022, five days after its registered mailing.

#### Preliminary Issue – Amendment of Landlord’s Application

Pursuant to section 64(3)(c) of the *Act*, I amend the landlord’s application to increase the landlord’s monetary claim to include July to December 2022 rent of \$1,000.00 for each month, totalling \$6,000.00. The landlord initially applied for unpaid rent of \$4,500.00 total, as per the 10 Day Notice, for the period from February to June 2022.

I find that the tenant is aware that rent is due as per his tenancy agreement. The tenant continues to reside in the rental unit, despite the fact that a 10 Day Notice required him to vacate earlier, for failure to pay the full rent due. Therefore, the tenant knew or should have known that by failing to pay his full rent, the landlord would pursue all

unpaid rent at this hearing. For the above reasons, I find that the tenant had appropriate notice of the landlord's claim for increased rent, despite the fact that he did not attend this hearing.

#### Issues to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

Is the landlord entitled to a monetary award for unpaid rent?

Is the landlord entitled to retain the tenant's security deposit?

Is the landlord entitled to recover the filing fee for this application?

#### Background and Evidence

The landlord's agent testified regarding the following facts. This tenancy began on June 1, 2020. Monthly rent in the amount of \$1,000.00 is payable on the first day of each month. A security deposit of \$200.00 was paid by the tenant and the landlord continues to retain this deposit in full. No written tenancy agreement was signed, as this is a verbal tenancy agreement between both parties. The tenant continues to reside in the rental unit.

The landlord's agent stated the following facts. The 10 Day Notice, which has an effective move-out date of July 11, 2022, indicates that rent in the amount of \$4,500.00 was due on June 20, 2022. The landlord made an error by indicating June 20, 2022, because the rent was due on June 1, 2022. However, the tenant still failed to pay the rent, regardless. The landlord provided a copy of the notice. The above amount includes rent of \$500.00 for February 2022 and rent of \$1,000.00 for each month from March to June 2022, totalling \$4,500.00. The tenant also failed to pay rent of \$1,000.00 for each month from July to December 2022, totalling an additional \$6,000.00.

The landlord's agent testified regarding the following facts. The landlord seeks an order of possession based on the 10 Day Notice, a monetary order of \$10,500.00 for unpaid rent from February to December 2022, and recovery of the \$100.00 filing fee. The landlord seeks to retain the tenant's security deposit of \$200.00 towards the above monetary order.

### Analysis

The landlord provided undisputed evidence at this hearing, as the tenant did not attend. The tenant failed to pay the full rent due on June 20, 2022, within five days of being deemed to have received the 10 Day Notice on July 3, 2022. The tenant has not made an application pursuant to section 46(4) of the *Act* within five days of being deemed to have received the 10 Day Notice.

In accordance with section 46(5) of the *Act*, the failure of the tenant to take either of these actions within five days led to the end of this tenancy on July 13, 2022, the corrected effective date on the 10 Day Notice. In this case, this required the tenant and anyone on the premises to vacate the premises by July 13, 2022. As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession against the tenant pursuant to section 55 of the *Act*. I find that the landlord's 10 Day Notice complies with section 52 of the *Act*.

As per section 26 of the *Act*, the tenant is required to pay rent on the first day of each month. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

The landlord provided undisputed evidence that the tenant failed to pay rent of \$500.00 for February 2022 and \$1,000.00 for each month from March to December 2022, totalling \$10,500.00. Although this hearing occurred on December 2, 2022, I find that the rent was due on December 1, 2022, so the tenant owes rent for the full month of December 2022. Therefore, I find that the landlord is entitled to \$10,500.00 total in rental arrears from the tenant.

As the landlord was successful in this application, I find that she is entitled to recover the \$100.00 filing fee from the tenant.

The landlord continues to hold the tenant's security deposit of \$200.00. In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenant's entire security deposit of \$200.00, in partial satisfaction of the monetary award. No interest is payable over the period of this tenancy.

I issue a monetary order to the landlord, against the tenant, for the balance owing of \$10,400.00.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I order the landlord to retain the tenant's entire security deposit of \$200.00 in partial satisfaction of the monetary award.

I issue a monetary order in the landlord's favour in the amount of \$10,400.00 against the tenant. 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: December 02, 2022

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Residential Tenancy Branch