



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      **OPR-DR, MNR-DR, FFL**

### **Introduction**

This hearing dealt with an application by the landlord pursuant to the Residential Tenancy Act (“the Act”) for orders as follows:

- for an order of possession pursuant to section 55 of the Act
- for a monetary order pursuant to section 67 of the Act
- for reimbursement of the filing fee pursuant to section 72 of the Act

Landlord SP appeared. The tenant did not appear. All parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

The parties confirmed they were not recording the hearing pursuant to RTB Rules of Procedure 6.11. The parties were affirmed.

### **Preliminary Matter**

This matter initially proceeded by way of Direct Request. It was adjourned to a participatory hearing as the adjudicator noted that the landlord had not provided an address for service either on the 10 Day Notice or on the dispute notice.

The dispute notice generated for the participatory hearing did contain an address for service for the landlord. The landlord testified that he served the dispute notice and evidentiary package on the tenant by registered mail on October 13, 2022. He provided a Canada Post receipt and a tracking number in evidence in support of his assertion. I

find that the tenant is deemed served as of October 18, 2022 under sections 88, 89 and 90 of the Act.

The landlord testified that he served the 10 Day Notice to End Tenancy ("10 Day Notice") dated September 2, 2022, by posting it on the tenant's door on September 2, 2022. An employee of the landlord witnessed him do this. Proof of service was provided in evidence. Pursuant to section 88 and 90 of the Act the tenant is deemed to have been served with the 10 Day Notice as of September 5, 2022.

#### Issue(s) to be Decided

1. Is the 10 Day Notice valid and enforceable against the tenant? If so, is the landlord entitled to an order of possession?
2. Is the landlord entitled to an order for compensation?
3. Is the tenant entitled to recover the filing fee for this application?

#### Background and Evidence

The tenancy commenced November 1, 2019. Rent is \$1,500.00 per month due on the first day of the month. The landlord holds a security deposit of \$750.00 in trust for the tenant. The tenant still occupies the rental unit.

The landlord testified that the tenant started having difficulties paying rent approximately one year ago. He tried to work with her, however on September 1, 2022, the tenant did not pay rent. The 10 Day Notice was served September 2, 2022. He testified the tenant paid partial rent for September in the amount of \$900.00 and there is \$600.00 outstanding in rent for the month of September. Further the tenant did not pay rent for the months of October, November, and December 2022, and January 2023. The total amount of rent owing as of the date of the hearing is \$6,600.00. The landlord stated that the tenant owed rent prior to September 2022, however he only wished to collect rent owing after the date that the 10 Day Notice was served.

#### Analysis

The undisputed evidence of the landlord is that the tenant was in arrears of rent on September 1, 2022. The tenant failed to pay the unpaid rent within five days of receiving the 10 Day Notice to End Tenancy on September 5, 2022. The tenant has not made an application pursuant to section 46(4) of the Act within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the Act, the tenant's failure to take either of these actions within five days has led to the end of the tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by September 15, 2022.

Section 55(2)(b) of the Act states in part:

(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;

I find based on the evidence that the tenant was in arrears on rent as of September 1, 2022. The tenant has not disputed the 10 Day Notice and therefore the conclusive presumption in section 55(2)(b) I find that the 10 Day Notice meets the form and content requirements of section 52 of the Act and is therefore valid.

I further find based on the undisputed evidence of the landlord that the tenant currently owes \$6,600.00 in rent for the months of September through December 2022 and January 2023.

The landlord's application for an order of possession is granted. The landlord is entitled to monetary compensation for \$6,600.00 for unpaid rent. As the landlord was successful in his application, he is further entitled to recover his filing fee of \$100.00.

### Conclusion

The landlord is granted an order of possession which will be effective two days after it is served on the tenant. The order of possession must be served on the tenant. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

Using the offsetting provisions contained in section 72 of the *Act*, I allow the landlord to retain the tenant's security deposit in partial satisfaction of the amount owed. In addition, the landlord is entitled to a monetary order in the amount of \$5,950.00. The monetary order must be served on the tenant. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: January 10, 2023

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Residential Tenancy Branch