



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR MNRL-S, FFL

### Introduction

This hearing was scheduled to convene at 9:30 a.m. on January 10, 2023 concerning an application made by the landlord seeking an order of possession and a monetary order for unpaid rent or utilities; an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of the application.

An agent for the landlord attended the hearing and gave affirmed testimony. However, the line remained open while the telephone system was monitored for 10 minutes prior to hearing any testimony, and no one for the tenant joined the call.

The landlord's agent testified that the tenant was served with the Notice of Dispute Resolution Proceeding and all evidence by registered mail on September 9, 2022 and the landlord has provided a copy of a Canada Post cash register receipt bearing that date as well as a Registered Domestic Customer Receipt, and I am satisfied that the tenant has been served in accordance with the *Residential Tenancy Act*.

All evidence of the landlord has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

- Has the landlord established that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was issued in accordance with the *Residential Tenancy Act*?
- Has the landlord established a monetary claim as against the tenant for unpaid rent?
- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

### Background and Evidence

The landlord's agent testified that this month-to-month tenancy began on October 1, 2020 and the tenant still resides in the rental unit. A tenancy agreement has been provided for this hearing, which does not indicate the day that rent is payable, however the landlord's agent testified that rent in the amount of \$1,400.00 is due on the 1<sup>st</sup> day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$700.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a basement suite, and the landlord resides in the upper level of the rental house.

The landlord's agent further testified that on August 9, 2022 the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice) by registered mail. A copy has been provided for this hearing as well as a Canada Post cash register receipt bearing that date and a Registered Domestic Customer Receipt addressed to the tenant. The Notice is dated August 9, 2022 and contains an effective date of vacancy of August 20, 2022 for unpaid rent in the amount of \$300.00 that was due on August 1, 2022.

A Tenant Ledger has also been provided for this hearing running from January 1, 2022 to September, 2022 showing that the tenant had been in a credit balance for several months during the year, and as of September 1, 2022 the tenant was in a credit balance of \$150.00. The landlord's agent testified that the way rent has been paid, the tenant was behind and caught up, but has now stopped paying. Rent was paid in full for October and November, 2022, but no rent has been paid for December, 2022 or for January, 2023. The landlord claims \$2,950.00 for outstanding rent, and for an order permitting the landlord to keep the \$700.00 security deposit in partial satisfaction.

The landlord has not been served with a Notice of Dispute Resolution Proceeding disputing the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, and the landlord seeks an Order of Possession.

### Analysis

I have reviewed the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, and I find that it is in the approved form and contains information required by the *Residential Tenancy Act*. The landlord's agent testified that the landlord has not been served with a Notice of Dispute Resolution Proceeding by the tenant disputing the Notice, and I have no such application before me. The law states that if a tenant does not dispute a notice

to end a tenancy given by a landlord, the tenant is conclusively presumed to have accepted the end of the tenancy. Having found that the Notice to end the tenancy is in the approved form, and since the tenant has not disputed it, I find that the landlord is entitled to an Order of Possession.

The *Act* also states that incorrect effective dates contained in a notice to end a tenancy are changed to the nearest date that complies with the law. Since the Notice was served by registered mail, it is deemed to have been served 5 days later, which would change the effective date of vacancy to August 24, 2022. Since the corrected effective date of vacancy has passed, I grant the Order of Possession effective on 2 days notice to the tenant. The tenant must be served with the order, which may be filed in the Supreme Court of British Columbia for enforcement.

I have also reviewed the Tenant Ledger, which shows that in January, 2022 the tenant paid \$1,400.00 twice, on the 4<sup>th</sup> and the 31<sup>st</sup>, leaving a credit balance of \$1,400.00, which I find covers rent for February. On February 28, 2022 the tenant paid an additional \$1,400.00, which covers rent for March, 2022. The tenant overpaid by \$50.00 on April 1 as well as on May 2, 2022, leaving a credit balance of \$100.00. The tenant paid \$1,400.00 on June 1, 2022, leaving the \$100.00 credit balance in place. However on July 4, 2022 the tenant paid \$900.00, and the \$100.00 credit balance was applied to that, leaving \$400.00 outstanding. On August 1, 2022 the tenant paid \$1,450.00, leaving a balance of \$350.00 outstanding. Rent for September was paid on the 1<sup>st</sup> of the month in the amount of \$1,450.00, \$50.00 of which was an overpayment, which reduced the arrears to \$300.00. On September 20, 2022 the tenant paid an additional \$450.00, which put the tenant in a credit balance again of \$150.00.

The landlord's agent testified that the way rent has been paid, there have been credit balances and the tenant was behind in rent and then caught up, but has now stopped paying rent. Rent for October and November, 2022 has been paid in full, but rent for December, 2022 and January, 2023 has not been paid, and the landlord claims \$2,950.00 for outstanding rent. The Tenant Ledger provided by the landlord only goes to September 20, 2022, and I have no reason to disbelieve the landlord's agent. However, if the tenant had a credit balance of \$150.00 as of September 20, 2022 and rent was paid in full for October and November, 2022, the tenant would get the benefit of the \$150.00 credit balance toward the arrears. Therefore, I find that the landlord has established a monetary claim of \$2,650.00 for unpaid rent ( $\$1,400.00 \times 2 = \$2,800.00 - \$150.00 = \$2,650.00$ ).

The landlord has applied to keep the \$700.00 security deposit in partial satisfaction.

Since the landlord has been successful with the application, the landlord is also entitled to recovery of the \$100.00 filing fee.

I order the landlord to keep the \$700.00 security deposit in partial satisfaction of the claim, and I grant a monetary order in favour of the landlord as against the tenant for the difference in the amount of \$2,050.00 ( $\$2,650.00 + \$100.00 = \$2,750.00 - \$700.00 = \$2,050.00$ ). The tenant must be served with the order, which may be filed in the Provincial Court of British Columbia, Small Claims division as a judgment.

### Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord effective on 2 days notice to the tenant.

I hereby order the landlord to keep the \$700.00 security deposit in partial satisfaction of the claim and I grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$2,050.00.

This order is final and binding and may be enforced.

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 12, 2023

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Residential Tenancy Branch