



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding REDWOOD APARTMENTS LTD.  
and [tenant name suppressed to protect privacy]

## **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, by teleconference, was held on January 3, 2023. The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession for unpaid rent or utilities;
- a monetary order for unpaid rent or utilities; and,
- to recover the filing fee from the Tenant for the cost of this application.

The Landlord attended the hearing and provided affirmed testimony. The Tenant did not attend the hearing. The Landlord testified that he sent the Notice of Dispute Resolution Proceeding to the Tenant by registered mail on August 22, 2022. Proof of mailing was provided at the hearing. I find the Tenant is deemed to have received this package on August 27, 2022, the fifth day after its registered mailing, pursuant to Section 90 of the *Act*.

In the hearing, the Landlord stated that the Tenant no longer owes any money at this time, and they are only seeking an order of possession. As such, I amend the Landlord's application accordingly to only consider this ground.

The Landlords were 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.

Issue(s) to be Decided

1. Is the Landlord entitled to an order of possession for unpaid rent or utilities?

Background and Evidence

The Landlord testified that current rent is \$623.00, and is due on the first day of each month.

The Landlord testified that the Tenant has failed to pay rent on time for 25 of the last 28 months. The Landlord provided a copy of the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice), which was posted to the Tenant's front door on June 2, 2022, as per the proof of service document. Service of this document was witnessed by a third party. The 10 Day Notice specified that \$1,372.00 was still unpaid at that time.

The Landlord provided a detailed breakdown of all payments made over the material time, and it shows that the Tenant owed \$1,372.00, as of June 1, 2022. The Landlord explained that the Tenant didn't make any payments towards the balance owing until June 25, 2022, when she paid \$1,100.00. The Landlord stated that since that time, the Tenant has paid off her outstanding balance, but continues to pay rent late, which is why they want the tenancy to end.

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 Landlords 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 after receipt, under section 46(4) of the *Act*, 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 had a balance of unpaid rent in the amount of \$1,372.00 at the time the 10 Day Notice was issued on June 2, 2022. I note the Notice

was posted to the Tenants door on June 2, 2022. Pursuant to section 90 of the Act, I find the Tenant is deemed served with that document 3 days after it was posted.

The Tenant had 5 days to pay rent in full or file an application for dispute resolution, after receipt of the Notice. Although the Tenants paid \$1,1000.00 on June 25, 2022, they did not pay this amount within the 5 day period allowed under the Act, and did not pay in full. As the Tenant did not pay in full by June 10, 2022, 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.

Since the Landlord was successful, I award the recovery of the filing fee paid, \$100.00, pursuant to section 72 of the Act. I authorize the Landlord to retain \$100.00 from the Tenant's security deposit.

### Conclusion

The Landlords are 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 Landlords may file the order with the Supreme Court of British Columbia 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: January 4, 2023

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Residential Tenancy Branch