



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## DECISION

Dispute Codes      **OPR, MNRL, MNDCL, FFL**

### Introduction

This hearing dealt with the Landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

1. An Order of Possession for a 10 Day Notice to End Tenancy For Unpaid Rent or Utilities (the "10 Day Notice") pursuant to Sections 46, 55 and 62 of the Act;
2. A Monetary Order to recover money for unpaid rent pursuant to Sections 26, 46 and 67 of the Act; and,
3. A Monetary Order for compensation for a monetary loss or other money owed pursuant to Section 67 of the Act; and,
4. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord's Agent, Representative and Witness attended the hearing at the appointed date and time and provided affirmed testimony. The Tenant did not attend the 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 team and I were the only ones who had called into this teleconference. The Landlord's team were given a full opportunity to be heard, to make submissions, and to call witnesses.

I advised the Landlord's team that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. The Landlord's team testified that they were not recording this dispute resolution hearing.

The Landlord's Agent served the Tenant with the 10 Day Notice by Canada Post registered mail on September 14, 2022. The Landlord's Agent uploaded a Proof of

Service form #RTB-34 attesting to this service. I noted the registered mail tracking number on the cover sheet of this decision. I find that the 10 Day Notice was deemed served on the Tenant on September 19, 2022 pursuant to Sections 88(c) and 90(a) of the Act.

The Landlord's Agent served the Notice of Dispute Resolution Proceeding package and evidence for this hearing to the Tenant by attaching a copy on the Tenant's door on November 19, 2022 (the "NoDRP package"). The Witness attested to observing the Landlord's Agent attaching the NoDRP package to the door of the Tenant. I find that the Tenant was deemed served with the documents for this hearing three days after posting, on November 22, 2022, in accordance with Sections 89(2)(d) and 90(c) of the Act.

### Preliminary Matter

#### *Monetary Amount*

RTB Rules of Procedure 4.2 allows for amendments to be made in circumstances where the amendment 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. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served. On this basis, I accept the Landlord Agent's request to amend their original application from \$2,714.00 to \$11,164.00 to reflect the unpaid rent that became owing by the time this hearing was convened.

### Issues to be Decided

1. Is the Landlord entitled to an Order of Possession for the 10 Day Notice?
2. Is the Landlord entitled to a Monetary Order to recover money for unpaid rent?
3. Is the Landlord entitled to a Monetary Order for compensation for a monetary loss or other money owed?
4. Is the Landlord entitled to recovery of the application filing fee?

### Background and Evidence

I have reviewed all written and oral evidence and submissions presented to me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The Landlord's Agent confirmed that this oral periodic tenancy began approximately 4 years prior to the current year. The Landlord purchased the home 2 or 3 years ago and the Tenant resided in the premises at the time. Monthly rent is \$1,300.00 payable on the 12<sup>th</sup> and 19<sup>th</sup> day of each month. The Landlord's Agent testified that no security deposit or pet damage deposit was paid.

The reason in the 10 Day Notice why the Landlord was ending the tenancy was because the Tenant owed \$2,714.00 in outstanding rent on September 12, 2022. The effective date of the 10 Day Notice was September 24, 2022.

The Landlord's Agent testified that the following rent payments have been made by the Tenant:

<b>RENT</b>	Rent Owing	Date Paid	Rent/Partial Amount Paid	O/S Rent Total
Jan 19, 2022	\$650.00	Jan 20, 2022	\$650.00	\$0.00
Feb 12, 2022	\$650.00	Feb 15, 2022	\$650.00	\$0.00
Feb 19, 2022	\$650.00	Feb 19, 2022	\$650.00	\$0.00
Mar 12, 2022	\$650.00	Mar 17, 2022	\$536.00	\$114.00
Mar 19, 2022	\$650.00	Mar 27, 2022	\$650.00	\$114.00
Apr 12, 2022	\$650.00	Apr 13, 2022	\$650.00	\$114.00
Apr 19, 2022	\$650.00	May 5, 2022	\$650.00	\$114.00
May 12, 2022	\$650.00	May 17, 2022	\$650.00	\$114.00
May 19, 2022	\$650.00	Jun 3, 2022	\$650.00	\$114.00
Jun 12, 2022	\$650.00	Jun 20, 2022	\$650.00	\$114.00
Jun 19, 2022	\$650.00		\$0.00	\$764.00
Jul 12, 2022	\$650.00	Jul 15, 2022	\$600.00	\$814.00
Jul 19, 2022	\$650.00	Aug 3, 2022	\$700.00	\$764.00
Aug 12, 2022	\$650.00		\$0.00	\$1,414.00
Aug 19, 2022	\$650.00		\$0.00	\$2,064.00
Sep 12 2022	\$650.00		\$0.00	\$2,714.00

RENT	Rent Owing	Date Paid	Rent/Partial Amount Paid	O/S Rent Total
Sep 19, 2022	\$650.00		\$0.00	\$3,364.00
Oct 12, 2022	\$650.00		\$0.00	\$4,014.00
Oct 19, 2022	\$650.00		\$0.00	\$4,664.00
Nov 12, 2022	\$650.00		\$0.00	\$5,314.00
Nov 19, 2022	\$650.00		\$0.00	\$5,964.00
Dec 12, 2022	\$650.00		\$0.00	\$6,614.00
Dec 19, 2022	\$650.00		\$0.00	\$7,264.00
Jan 12, 2023	\$650.00		\$0.00	\$7,914.00
Jan 19, 2023	\$650.00		\$0.00	\$8,564.00
Feb 12, 2023	\$650.00		\$0.00	\$9,214.00
Feb 19, 2023	\$650.00		\$0.00	\$9,864.00
Mar 12, 2023	\$650.00		\$0.00	\$10,514.00
Mar 19, 2023	\$650.00		\$0.00	\$11,164.00
TOTAL OUTSTANDING RENT:				\$11,164.00

The Landlord's Agent stated that the Tenant does not have permission from the Landlord to withhold rent, and the Tenant has not received an Order from an Arbitrator authorizing him to withhold rent. The Landlord is seeking an Order of Possession and a Monetary Order for unpaid rent in the amount of \$11,164.00.

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

This hearing was conducted pursuant to Rules of Procedure 7.3, in the Tenant's absence, therefore, all the Landlord's testimony is undisputed. Rules of Procedure 7.3 states:

***Consequences of not attending the hearing:*** *If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.*

Section 26(1) of the Act specifies the rules about payment of rent. It states, *a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

Section 46 of the Act outlines how a tenancy can end for unpaid rent:

***Landlord's notice: non-payment of rent***

- 46** (1) *A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.*
- (2) *A notice under this section must comply with section 52 [form and content of notice to end tenancy].*
- ...
- (5) *If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant*
- (a) *is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and*
- (b) *must vacate the rental unit to which the notice relates by that date.*
- ...

The Tenant was deemed served with the 10 Day Notice on September 19, 2022. I find that the 10 Day Notice complied with the form and content requirements of Section 52 of the Act.

The Landlord's Agent submitted a detailed statement of account of when rent was due, and when full or partial rent payments were made. I find the Tenant has not paid rent when due and is deeply in arrears. The total outstanding rent amount is \$11,164.00. The Landlord's Agent testified that the Tenant does not have permission, from the Landlord or an Arbitrator, to withhold rent. I find on a balance of probabilities that the 10 Day Notice is valid, and I uphold the Landlord's 10 Day Notice.

The Tenant did not attend this hearing to give evidence about the outstanding rent although he was provided notice of this hearing date. Pursuant to Section 46(5)(a), I find



that the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date, which was September 24, 2022.

I must consider if the Landlord is entitled to an Order of Possession and a Monetary Order for unpaid rent. Section 55 of the Act reads as follows:

***Order of possession for the landlord***

**55** (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if*

- (a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and*
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.*

*(1.1) If an application referred to in subsection (1) is in relation to a landlord's notice to end a tenancy under section 46 [landlord's notice: non-payment of rent], and the circumstances referred to in subsection (1) (a) and (b) of this section apply, the director must grant an order requiring the payment of the unpaid rent.*

I have upheld the Landlord's 10 Day Notice and I find the Landlord is entitled to an Order of Possession pursuant to Section 55(1) of the Act which will be effective two (2) days after service on the Tenant.

The Landlord is also entitled to a Monetary Order to recover the outstanding rent amount pursuant to Section 55(1.1) of the Act. Pursuant to Section 57(3) of the Act, the Landlord may claim compensation from his overholding Tenant. The total outstanding rent amount is \$11,164.00. RTB Rules of Procedure 4.2 allows me to amend the Landlord's original application amount, and I do so in this decision.

The Landlord's Agent confirmed that the request for compensation for a monetary loss or other money owed was just for the outstanding rent. I dismiss this claim in the Landlord's application as he is entitled to a Monetary order to recover the outstanding rent pursuant to Section 55(1.1) of the Act.

Since the Landlord was successful in his claim, I grant him recovery of the \$100.00 application filing fee pursuant to Section 72(1) of the Act. The Landlord's Monetary Award is calculated as **\$11,264.00** (\$11,164.00 + \$100.00).

### Conclusion

The Landlord is granted an Order of Possession, which will be effective two (2) days after service on the Tenant. The Landlord must serve this Order on the Tenant as soon as possible. The Order of Possession may be filed in and enforced as an Order of the Supreme Court of British Columbia.

I grant a Monetary Order to the Landlord in the amount of \$11,264.00. 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 of British Columbia 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 Act.

Dated: March 20, 2023

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Residential Tenancy Branch