



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      OPR, OPM, OPN, MNRL, FFL

### Introduction

The Landlord filed an Application for Dispute Resolution (the “Application”) on November 8, 2022 seeking an order of possession for the rental unit, to recover the money for unpaid rent, and to recover the filing fee for the Application. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on March 20, 2023. In the conference call hearing I explained the process and provided the attending party the opportunity to ask questions.

The Landlord attended the telephone conference call hearing; the Tenant did not attend.

### Preliminary Matter – Notice of Dispute Resolution Proceeding to Tenant

To proceed with this hearing, I must be satisfied that the Landlord made reasonable attempts to serve the tenant with this Notice of Dispute Resolution Proceeding. This means the Landlord must provide proof that the document was served in a method allowed under s. 89(2) of the *Act*, and I must accept that evidence.

The Landlord provided testimony and evidence that they used registered mail for this purpose. They included a registered mail receipt in the evidence to show they sent this on November 24, 2022. They stated the Tenant did not retrieve this registered mail.

Based on the submissions of the Landlord, I accept they served the Tenant notice of this hearing and their Application in a manner complying with s. 89(2)(b) of the *Act*, and the hearing proceeded in the tenant’s absence.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession for unpaid rent pursuant to s. 55 of the *Act*?

Is the Landlord entitled to an Order of Possession in line with a mutual agreement to end tenancy, pursuant to s. 55 of the *Act*?

Is the landlord entitled to an Order of Possession based on the Tenant's own written notice to end the tenancy, pursuant to s. 55 of the *Act*?

Is the Landlord entitled to monetary compensation for unpaid rent pursuant to s. 67 of the *Act*?

Is the Landlord entitled to recover the filing fee for this Application pursuant to s. 72 of the *Act*?

Background and Evidence

The Landlord spoke to the basic terms of the tenancy agreement in the hearing. The tenancy started "probably two years ago" and the rent amount was \$1,000 per month, payable on the first of each month. The Tenant did not pay a security deposit.

The Landlord applied for an Order of Possession pursuant to the 10-Day Notice to End Tenancy for Unpaid Rent (the "10-Day Notice"). They presented that they served this to the tenant on November 1, 2022. They served this to the Tenant in person on that date. As attested to in a "Proof of Service" document they provided, a witness observed that mode of service directly.

The 10-Day Notice states that the Tenant had five days from the date received to pay the rent in full or apply for dispute resolution, or the tenancy would end on the vacancy date indicated, November 15, 2022.

The reason for the Landlord serving the 10 Day Notice is accumulated unpaid rent, this was for \$3,000 due on November 1, 2022.

The Landlord also applied for a monetary order for \$3,000 in unpaid rent for September to October 2022.

In the hearing, the Landlord described visiting the rental unit many times throughout November and December; however, they did not observe the Tenant at the rental unit. They knocked on the rental unit door several times with no answer. They also spoke to neighbours who provided that they had not seen the Tenant for quite some time. On January 5, 2023, the Landlord finalized their conclusion that the Tenant abandoned the rental unit sometime in December 2022.

The Landlord in their evidence also provided handwritten notes from the Tenant stating that they would move out by certain dates; these are October 31, 2022 and November 13, 2022.

### Analysis

From the testimony of the Landlord, I am satisfied that a tenancy agreement was in place. They provided the specific terms of rental payment and amount, at \$1,000 per month payable on the first day of each month.

I accept the undisputed evidence before me that the Tenant failed to pay the rent owed in full by November 8, 2022, within the five days granted under 46(4) of the *Act*, and accounting for a three-day deemed service time (by s. 90(c)) given that the Landlord served the 10-Day Notice by attaching it to the door of the rental unit. The Tenant did not dispute the 10-Day Notice within that five-day period.

Based on the foregoing, I find that the Tenant is conclusively presumed under s. 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 10 Day Notice: November 15, 2022.

The Landlord provided testimony and evidence on the account in question and the accumulation of the amount. As presented, I find the amount of \$3,000 is accurate.

I find the landlord is entitled to an Order of Possession as well an award for the unpaid rent amount of \$3,000. As the Landlord is successful in this application, I find that the Landlord is entitled to recover the \$100 filing fee they paid for this Application.

The tenancy is ending via the Landlord's issuance of the 10-Day Notice for unpaid rent. I grant no consideration of the other grounds by which the Landlord seeks an order of

possession, that of the Tenant's notice to end the tenancy, and that of mutual agreement.

### Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the Tenant. Should the Tenant fail to comply with this Order, the Landlord may file this Order in the Supreme Court of British Columbia, where it may be enforced as an Order of that court.

Pursuant to s. 67 and s. 72 of the *Act*, I grant the Landlord a Monetary Order in the amount of \$3,100 for rent owed for September through to November 2022 and a recovery of the filing fee for this hearing application. The Landlord is provided with this Order in the above terms and 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 s. 9.1(1) of the *Act*.

Dated: March 20, 2023

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Residential Tenancy Branch