



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

A matter regarding Rainbow Valley Nursery  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR, FFL

### Introduction

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

1. an Order of Possession, pursuant to section 55;
2. a Monetary Order for unpaid rent, pursuant to section 67; and,
3. authorization to recover the filing fee for this application from the tenant pursuant to section 72.

AG appeared at the hearing as agent for the landlord.

AG confirmed they were not recording the hearing pursuant to Rule of Procedure 6.11. AG was given full opportunity under oath to be heard, to present evidence and to make submissions.

AG testified that they served the tenant with the Notice of Dispute Resolution Proceeding and evidence package on December 29, 2022, by registered mail. In support of this, the landlords provided a receipt containing a Canada Post tracking number.

Based on the uncontested affirmed testimony of AG and in accordance with section 88 and 90 of the Act, I find that the required documents were served on the tenant on December 29, 2023, and are deemed to have been received by the tenant on January 3, 2023, the fifth day after they were sent by registered mail.

The tenant did not appear at the hearing. The hearing proceeded in the tenant's absence pursuant to Rule of Procedure 7.3.

### Preliminary Matters

During the hearing, AG requested that I amend the landlord's application to include RVN as a corporate landlord. AG indicated that JM owns RVN and that all rent payments were made to RVN. Pursuant to section 64(3)(c) of the Act, I amend the landlord's application to include RVN as a landlord.

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession and Monetary Order for unpaid rent?  
Is the landlord entitled to recover the filing fee for this application from the tenant?

### Background and Evidence

While I have considered the documentary evidence and AG's testimony not all of the details of their submissions and evidence are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

AG provided affirmed testimony that the tenancy began on April 1, 2021. Rent is \$900.00 due on the first day of the month. The landlord did not collect a security or pet deposit. No written tenancy agreement exists.

AG drew my attention to the landlords' evidence which includes e-transfer receipts showing payments made by the tenant to RVN. The e-transfer receipts document payments received by the landlords from April 21, 2021, to present.

AG testified that they served the tenant with the 10-Day Notice by sending a copy by registered mail on December 10, 2022. In support of this AG submitted a Proof of Service Document indicating the same and a receipt containing a Canada Post Tracking Number.

AG testified that the \$10,525.00 which is listed on the 10-Day Notice includes all of the outstanding rent owed since December 2021. AG directed my attention to the document titled "Spreadsheet of Rent Owed" (the "Spreadsheet") which is submitted into evidence. AG testified that when the 10-Day Notice was issued they were not aware of the payment of \$50.00 which was made on November 4, 2022, or the payment of \$300.00 which was made on November 16, 2023. As a result, the 10-Day Notice was issued for \$350.00 more than what was outstanding at that time. AG testified that

the total amount owing when the 10-Day Notice was issued was \$10,175.00 as stated on the Spreadsheet and not \$10,575.00 as stated on the 10-Day Notice.

AG further testified that the tenant is still residing in the rental unit and rent is currently outstanding for the months of January, February, March, and April 2023.

The landlords are seeking an Order of Possession and Monetary Order for \$13,775.00 in outstanding rent.

### Analysis

The Act defines a tenancy agreement as: “an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities.”

I have considered AG’s undisputed oral and documentary evidence and I accept, in the absence of a written tenancy agreement, a tenancy exists between the landlords and tenant and that the tenancy commenced on April 1, 2021.

Based on the uncontested affirmed testimony of the landlord and in accordance with section 89 and 90 of the Act, I find that the 10-Day Notice was served on the tenant on December 10, 2023, and is deemed to have been received by the tenant on December 15, 2022, the fifth day after it was sent by registered mail.

Section 26(1) of the Act requires a tenant to pay rent when it is due under the tenancy agreement whether or not the landlord complies with the Act, regulations, or the tenancy agreement.

Section 46(1) of the Act permits a landlord to end a tenancy if rent is unpaid on any day after the day it is due by issuing a 10-Day notice to end tenancy which must comply with section 52 (form and content) of the Act. Upon receipt of a notice to end tenancy issued under section 46 of the Act, a tenant has 5 days to either pay the overdue rent or file an application disputing the notice as per section 46(4). If a tenant fails to comply with the requirements of the notice, section 46(5) is triggered such that the tenant is conclusively presumed to have accepted the end of the tenancy and must vacate the rental unit by the effective date of the notice.

I accept the undisputed affirmed testimony of AG that while the Notice was issued for an incorrect amount, it was issued for a valid reason, namely, the tenant's non-payment of rent.

Based on the foregoing, I find that the tenant is conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the corrected effective date of the 10 Day Notice, December 25, 2022, pursuant to section 53(2) of the Act. Section 55(2)(c) of the Act permits a landlord to request an Order of Possession when a notice to end the tenancy has been given by the landlord, the tenant has not made an application to dispute the notice, and the time for making any such application has expired.

In this case, the landlord served the Notice in accordance with the Act, the Notice complies with section 52 of the Act and the tenant has not made an application to dispute the Notice. As such, I find that the landlord has proven on a balance of probabilities that they are entitled to an Order of Possession.

I find that the landlord is entitled to an Order of Possession pursuant to section 55(4)(a) of the Act. A copy of the Order of Possession is attached to this Decision and must be served on the tenant. The tenant has two days to vacate the rental unit from the date of service or deemed service.

AG's oral and documentary evidence establishes that the tenant owes \$13,775.00 in unpaid rent. Taking into consideration all of the undisputed evidence before me, I find on a balance of probabilities that the tenant did not pay the rent as required under section 26(1) of the Act.

Pursuant to section 67 of the Act (*"Director's orders: compensation for damage or loss"*) I have determined that the landlord suffered a monetary loss of \$13,775.00 due to the tenant's failure to pay rent. However, Section 7(2) of the Act requires a landlord who claims compensation for damage or loss that results from the tenant's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

In this case, the landlords presented no evidence to support that they made any efforts to minimize their loss. The 10-Day Notice was issued one full year after the tenant's initial failure to pay rent. I find that the landlords did not satisfy the requirement under section 7(2) of the Act to do whatever is reasonable to minimize their damage or loss. On that basis, I find that the landlord is not entitled to compensation for the total amount

of rent outstanding. Rather, I find that they are entitled to compensation for the last year of the tenancy (April 2022 to April 2023).

The ledger indicates that from April 2022 until April 2023, the tenant made rent payments totalling \$875.00. This amount has been deducted from the total amount owing. Based on my calculations and pursuant to section 67 and 7(2) of the Act I order that the tenant pay to the landlord the amount of \$9,925.00 in outstanding rent.

Since the landlord was partially successful in their application, they are entitled to recover the filing fee paid for this application from the tenant.

### Conclusion

The landlord is granted an Order of Possession which will be effective two days after service upon the tenant. The Order of Possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

I issue a Monetary Order in the landlord's favour in the amount of \$1,025.00 as follows:

Item	Amount
Rent due April 2022 to April 2023 (12 x \$900.00)	\$10,800.00
Rent paid April 2022 to April 2023	-\$875.00
Filing Fee	\$100.00
<b>Total Monetary Order</b>	<b>\$10,025.00</b>

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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: May 2, 2023

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Residential Tenancy Branch