



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      **OPR-DR, MNR-DR, FFL**

### Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- An Order of Possession under a 10-Day Notice to End Tenancy for Unpaid Rent and Utilities (“10 Day Notice”) pursuant to sections 46 and 55.
- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* (“*Regulation*”) or tenancy agreement pursuant to section 67 of the *Act*.
- Authorization to retain all or a portion of the tenant’s security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*.
- An order requiring the tenant to reimburse the landlord for the filing fee pursuant to section 72.

The hearing was conducted by teleconference. The landlord attended and provided affirmed testimony. The landlord was given the opportunity to make submissions as well as present oral and written evidence.

Because of technical issues, I exited the hearing at 1:32 pm and informed the landlord I would rejoin the hearing as soon as possible. I asked her to stay on the call.

I rejoined the hearing at 1:40 at which time both parties were on the call. The tenant identified himself. He said his battery was about to die. He did not request an adjournment or any accommodation. His connection was suddenly terminated. He did not rejoin the hearing.

The tenant was on the call for less than 2 minutes.

I kept the teleconference line open for 34 minutes to allow the tenant the opportunity to call again. The teleconference system indicated only the landlord and I had called into the hearing after the tenant exited. I confirmed the correct call-in number and participant code for the tenant had been provided.

### *Reconvened Hearing*

This is a reconvened hearing from an Interim Decision pursuant to section 57 of the Act dated January 6, 2023.

The landlord testified the tenant was served with the Notice of Reconvened Hearing, the Interim Decision and all supporting documents as required pursuant to the Act and the Interim Decision by registered mail sent by the landlord to the tenant on January 9, 2023. The landlord submitted a copy of the receipts including the tracking number.

Pursuant to the Act and the landlord's credible evidence, I find the landlord served the tenant with the documents under the Act.

### *Preliminary Issue –Names*

The landlord clarified there are two correct spellings of her name.

Accordingly, I amended the name of the landlord to reflect both spellings.

Issue(s) to be Decided.

Is the landlord entitled to the following relief:

- An Order of Possession
- A Monetary Order for unpaid rent
- Authorization to retain the deposits
- Reimbursement of the filing fee

Background and Evidence

The landlord provided uncontradicted testimony as follows as the tenant did not attend the hearing other than as stated above.

The landlord submitted a copy of the tenancy agreement. she testified the parties entered a fixed term tenancy starting on July 01, 2021. On June 30, 2022, the tenancy became month-to-month.

Rent is \$1,675.00 payable on the first of the month.

The tenant paid a security deposit and a pet deposit each in the amount of \$837.50. The landlord holds the deposits. The tenant has not provided authorization to the landlord to apply the deposits to outstanding rent.

*10 Day Notice*

The landlord testified she served the tenant with a 10 Day Notice dated April 5, 2022, with an effective date of April 15, 2022 (corrected to April 18, 2022). The 10 Day Notice is in the standard RTB form. The Notice states rent was outstanding in the amount of \$3,675.00.

The landlord posted the document on the door on April 5, 2022, in the presence of the landlord's spouse. She submitted as supporting evidence a signed Proof of Service RTB form.

The landlord submitted a copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated April 5, 2022, for \$3,675.00 in unpaid rent. The Notice is in the standard RTB form.

She also submitted a copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was attached to the tenant's door at 2:30 pm on April 5, 2022, thereby effecting service on April 8, 2022.

The 10 Day Notice provides that the tenant had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the stated effective vacancy date of April 15, 2022.

The landlord's application for an Order of Possession was made November 11, 2022. Before this application, the landlord attempted unsuccessfully to obtain an Order of Possession, denied because of incomplete documents.

At no time did the landlord tell the tenant that he could remain in the unit.

The landlord explained the delay in her application for an Order of Possession. She stated this is her fifth application, the others having been rejected for inadequacies of documents submitted as evidence.

The tenant did not pay the rent in full after service of the 10 Day Notice.

The tenant did not apply to dispute the 10 Day Notice.

The landlord requested an Order of Possession effective on two days' notice.

### *Outstanding Rent*

The landlord testified the tenant has made some payments on outstanding rent after the Notice was served which were accepted for use and occupancy only.

The total outstanding claim at the time of the hearing was \$15,400.00.

The landlord stated the tenant continues to occupy the site.

The landlord requested an award for outstanding rent of \$15,400.00.

The landlord requested reimbursement of the amount of the filing fee of \$100.00.

The landlord requested authorization to apply the security deposit to the award.

The landlord's claim:

ITEM	AMOUNT
Outstanding rent	\$15,400.00
Filing fee reimbursement	\$100.00
(Security deposit - less \$837.50)	(\$837.50)
(Pet deposit – less \$837.50)	(\$837.50)
<b>TOTAL AWARD REQUESTED</b>	<b>\$13,825.00</b>

### Analysis

I have reviewed all documentary evidence and testimony. I accept the landlord's credible and well supported evidence in its entirety.

The form and content of the 10-Day Notice complies with section 52 of the *Act*.

The tenant was served with the 10-Day Notice, as the landlord testified, in accordance with section 88 of the *Act* on April 8, 2022.

I find the tenant did not pay the overdue rent or dispute the 10-Day Notice within the five-day period following service.

Therefore, pursuant to section 42(5)(a), the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice (corrected to April 18, 2022), requiring the tenant to vacate by that date.

As the tenant continues in occupation, I find the landlord is entitled to an Order of Possession under section 55, effective two days after service.

Based on the uncontradicted evidence of the landlord, I find the landlord is entitled to a monetary award pursuant to section 67 in the amount of \$15,400.00 for unpaid rent.

As the landlord was successful in this application, I award the landlord reimbursement of the \$100.00 filing fee. I grant the landlord authorization to apply the deposits to the award.

A summary of my monetary finding follows:

ITEM	AMOUNT
Outstanding rent	\$15,400.00
Filing fee reimbursement	\$100.00
(Security deposit - less \$837.50)	(\$837.50)
(Pet deposit – less \$837.50)	(\$837.50)
<b>TOTAL</b>	<b>\$13,825.00</b>

#### Summary

I grant a Monetary Order to the landlord in the amount of **\$13,825.00**.

#### Conclusion

I grant a Monetary Order to the landlord in the amount of **\$13,825.00**.

I also grant the landlord an Order of Possession effective two days after service on the tenant.

This Monetary Order must be served on the tenant. If the tenant fails to comply with this Order, the landlord may file the Order in the Provincial Court (Small Claims) and be enforced as an Order of that Court.

I also grant the landlord an Order of Possession effective two days after service on the tenant.

This Order of Possession must be served on the tenant. If the tenant fails to comply with this Order, the landlord may file the Order with the Supreme Court of British Columbia to 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: May 1, 2023

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Residential Tenancy Branch