



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      OPR, OPN, MNRL-S, FFL

### Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a residential tenancy dispute. On December 15, 2022 the landlord applied for:

- an order of possession for the rental unit, having issued a 10 Day Notice to End Tenancy, dated December 2, 2022 (the 10 Day Notice);
- a monetary order for unpaid rent, requesting to retain the security deposit;
- an order of possession, as the tenant has given written notice to end the tenancy; and
- recovery of the filing fee.

Those present were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

Neither party raised an issue regarding service of the hearing materials.

### Preliminary Matter

#### *Settlement on Possession*

Pursuant to section 63 of the Act, if the parties settle their dispute during the dispute resolution proceeding, the settlement may be recorded in the form of a decision or an order. During the hearing, the parties reached a resolution regarding possession of the rental unit.

Both parties agreed to the following binding settlement term:

- 1) The tenant will vacate the rental unit by 1:00 PM on April 30, 2023.

Both parties testified at the hearing that they understood and agreed to the above term, free of any duress or coercion. As the parties resolved this matter by agreement, I make no findings of fact or law with respect to the landlord's applications for possession.

In support of the above agreement, I grant the landlord an order of possession effective 1:00 PM on April 30, 2023.

#### Issues to be Decided

- 1) Is the landlord entitled to a monetary order for unpaid rent?
- 2) Is the landlord entitled to the filing fee?

#### Background and Evidence

The parties agreed on the following particulars regarding the tenancy. It began December 2022; rent is \$695.00, due on the first of the month; and the tenant paid a security deposit of \$350.00 which the landlord still holds in trust.

The landlord testified that rent was paid and owing as follows, as the tenant always paid rent late:

<b>Month</b>	<b>Rent + late fee</b> (\$695.00 + \$35.00 = \$730.00)	<b>Rent paid</b>
(amount outstanding as of July 2021: 490.00)		
August 2021	730.00	450.00
September 2021	730.00	400.00
October 2021	730.00	500.00
November 2021	730.00	1000.00
December 2021	730.00	350.00
January 2022	730.00	0.00
February 2022	730.00	700.00
March 2022	730.00	1,245.00
April 2022	730.00	0.00
May 2022	730.00	700.00
June 2022	730.00	750.00

July 2022	730.00	695.00
August 2022	730.00	700.00
September 2022	730.00	1,500.00
October 2022	730.00	0.00
November 2022	730.00	0.00
December 2022	730.00	410.00
January 2023	730.00	200.00
February 2023	730.00	0.00
March 2023	730.00	200.00
April 2023	730.00	0.00

The landlord submitted as evidence a Rental Statement document indicating rent and late fees owed and paid from July 31, 2021 to December 11, 2022. The landlord provided testimony on the rent and late fees owed for January to April 2023. The landlord testified that his testimony on the amounts owed for January to April 2023 was based on the current Rental Statement document he had before him.

The tenant testified that he agreed with the landlord's Rental Statement submitted as evidence, recording charges and payments from July 31, 2021 to December 11, 2022. The tenant testified that for January through March 2023 he thinks he paid more but stated he could be wrong. The tenant agreed he did not pay rent in April 2023.

### Analysis

Section 26 of the Act states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the *Residential Tenancy Regulation* (the Regulation) or the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent.

Section 7 of the Regulation states that a landlord may charge an administration fee of not more than \$25.00 for late payment of rent.

The parties agree on the amount of rent and late fees owed to the landlord from July 2021 to December 2022, but may disagree on the amounts owed for January to March 2023.

The tenant was not clear in his testimony, stating that he may have paid more than the amount stated by the landlord, but is not sure. The tenant did not explain what he based his testimony on, other than his recollection. The landlord stated that he based his

testimony on the amounts owed for January to March 2023 on a tracking document before him.

I prefer the landlord's testimony over that of the tenant as the landlord was certain in his testimony and explained his information source, while the tenant was uncertain, said he himself could be wrong, and did not report basing his testimony on anything but his uncertain recall.

Based on the foregoing, I find the landlord is owed unpaid rent and maximum late fees of \$25.00 a month as below:

<b>Month</b>	<b>Rent + late fee</b> (\$695.00 + \$25.00 = \$720.00)	<b>Rent paid</b>	<b>Monthly outstanding</b>
amount outstanding as of July 2021			490.00
August 2021	720.00	450.00	270.00
September 2021	720.00	400.00	320.00
October 2021	720.00	500.00	220.00
November 2021	720.00	1000.00	-280.00
December 2021	720.00	350.00	370.00
January 2022	720.00	0.00	720.00
February 2022	720.00	700.00	20.00
March 2022	720.00	1,245.00	-525.00
April 2022	720.00	0.00	720.00
May 2022	720.00	700.00	20.00
June 2022	720.00	750.00	-30.00
July 2022	720.00	695.00	25.00
August 2022	720.00	700.00	20.00
September 2022	720.00	1,500.00	-780.00
October 2022	720.00	0.00	720.00
November 2022	720.00	0.00	720.00
December 2022	720.00	410.00	310.00
January 2023	720.00	200.00	520.00
February 2023	720.00	0.00	720.00
March 2023	720.00	200.00	520.00
April 2023	720.00	0.00	720.00
Total			\$5,810.00

I find the landlord is entitled to recover \$5,810.00 in unpaid rent and late fees.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the landlord is successful in their application, I order the tenant to pay the \$100.00 filing fee the landlord paid to apply for dispute resolution.

In accordance with section 72, I allow the landlord to retain the tenant's \$350.00 security deposit in partial satisfaction of the amount owing. The landlord is entitled to a monetary order as follows:

Unpaid rent and late fees	5,810.00
Filing fee	100.00
Security deposit	-350.00
<b>Owed to landlord</b>	<b>\$5,560.00</b>

### Conclusion

The parties reached a settlement on possession of the rental unit. In support, the landlord is granted an order of possession effective 1:00 PM on April 30, 2023.

The landlord is granted a monetary order in the amount of \$5,560.00 for unpaid rent, late fees, and recovery of the filing fee. The monetary order must be served on the tenant. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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 05, 2023

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Residential Tenancy Branch