



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      OPR, MNRL, FFL

### Introduction

The Landlord seeks the following relief under the *Residential Tenancy Act* (the “Act”):

- an order of possession pursuant to s. 55 after issuing a 10-Day Notice to End Tenancy signed on February 13, 2023 (the “10-Day Notice”);
- a monetary order pursuant to s. 67 for unpaid rent; and
- return of the filing fee pursuant to s. 72.

R.B. appeared as the Landlord. The Tenants did not attend the hearing, nor did someone attend on their behalf.

The Landlord affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Landlord advises that the Notice of Dispute Resolution and his evidence was served on the Tenants via registered mail sent on March 22, 2023. I accept the Landlord’s undisputed testimony and find that this was done in accordance with s. 89 of the *Act*. Pursuant to s. 90 of the *Act*, I deem that the Tenants received the Landlord’s application materials on March 27, 2023.

Pursuant to Rule 7.1 of the Rules of Procedure, the hearing began as scheduled in the Notice of Dispute Resolution. As the Tenants did not attend the hearing, it was conducted in their absence as permitted by Rule 7.3 of the Rules of Procedure.

Issue(s) to be Decided

- 1) Is the Landlord entitled to an order of possession?
- 2) Is the Landlord entitled to an order for unpaid rent?
- 3) Is the Landlord entitled to his filing fee?

Evidence and Analysis

The parties were given an opportunity to present evidence and make submissions. I have reviewed all included written and oral evidence provided to me by the parties and I have considered all applicable sections of the *Act*. However, only the evidence and issues relevant to the claims in dispute will be referenced in this decision.

*General Background*

The Landlord confirms the following details with respect to the tenancy:

- The Tenants moved into the rental unit on October 1, 2022.
- Rent of \$700.00 is due on the first of each month.
- No security deposit was paid by the Tenants.

I am told by the Landlord that there was no written tenancy agreement.

Review of the application shows that the rental unit is listed as a detached trailer. I enquired with the Landlord if he owned the trailer and was renting it out to the Tenants as living accommodation. He confirmed that he did own it and was renting it to the Tenants. I accept the Landlord's undisputed evidence and find that I have jurisdiction under the *Act*.

*Is the Landlord entitled to an Order of Possession?*

Under s. 55(2) of the *Act*, a landlord may request an order of possession if a notice to end tenancy has been given to the tenant and the time for disputing the notice to end tenancy has passed.

Pursuant to s. 46(1) of the *Act*, where a tenant fails to pay rent when it is due, a landlord may elect to end the tenancy by issuing a notice to end tenancy that is effective no sooner than 10-days after it is received by the tenant.

The Landlord advises that the 10-Day Notice was personally served on the Tenant on February 13, 2023. I accept the undisputed testimony from the Landlord and find that the 10-Day Notice was served in accordance with s. 88 of the *Act* and received on February 13, 2023.

As per s. 46(2) of the *Act*, all notices issued under s. 46 must comply with the form and content requirements set by s. 52 of the *Act*. I have reviewed the 10-Day Notice provided to me by the Landlord and find that it complies with the formal requirements of s. 52 of the *Act*. It is signed and dated by the Landlord, states the address for the rental unit, states the correct effective date, sets out the grounds for ending the tenancy, and is in the approved form (RTB-30).

Pursuant to s. 46(4) of the *Act*, a tenant has 5-days from receiving a 10-day notice to end tenancy to either pay the overdue rent or file an application to dispute the notice. In this instance, I am told by the Landlord that the Tenants neither disputed the 10-Day Notice nor did they pay the arrears within 5 days. I accept the undisputed evidence from the Landlord and find that s. 46(5) of the *Act* applies such that the Tenants are conclusively presumed to have accepted the end of the tenancy.

As the Tenants continue to reside within the rental unit, I find that the Landlord is entitled to an order of possession under s. 55 of the *Act*. The Tenants shall provide vacant possession of the rental unit to the Landlord within two days of receiving the order of possession.

*Is the Landlord Entitled to an Order for Unpaid Rent?*

Under s. 67 of the *Act*, the Director may order that a party compensate the other if damage or loss result from that party's failure to comply with the *Act*, the regulations, or the tenancy agreement. Policy Guideline #16 sets out that to establish a monetary claim, the arbitrator must determine whether:

1. A party to the tenancy agreement has failed to comply with the *Act*, the regulations, or the tenancy agreement.
2. Loss or damage has resulted from this non-compliance.
3. The party who suffered the damage or loss can prove the amount of or value of the damage or loss.
4. The party who suffered the damage or loss mitigated their damages.

The applicant seeking a monetary award bears the burden of proving their claim.

Pursuant to s. 26(1) of the *Act*, a tenant must pay rent when it is due whether or not the landlord complies with the *Act*, the Regulations, or the tenancy agreement unless the *Act* grants the tenant the right to deduct all or a portion of the rent.

The Landlord advises that the Tenants last made a rent payment of \$200.00 in November 2022, such that \$500.00 is still owed for that month, and have made no payments since that time. I accept the Landlord's undisputed evidence and find that the Tenants breached their obligation to pay rent under the tenancy agreement and are in breach of s. 26 of the *Act*. I further find that the Landlord is entitled to compensation in lieu of rent for the overholding period as the Tenants failed to vacate the rental unit by the effective date of the 10-Day Notice, resulting in loss of income due to their continued occupancy.

I permit the Landlord to seek the additional amount by amending its application pursuant to Rule 4.2 of the Rules of Procedure as the increase in arrears is reasonably anticipated under these circumstances. The Landlord also makes mention of rent for June 2023. However, as this has not been incurred yet, I find it would be premature to include in this claim.

I accept the Landlord's undisputed evidence and find that he has established total arrears owed by the Tenants stands at \$4,700.00 ((\$700.00 x 7 months (Nov' 22 to May 23)) - \$200.00 (November partial payment)). I find the Landlord is entitled to this amount as mitigation was impossible given the Tenants continue to occupy the rental unit.

I also grant the Landlord its filing fee of \$100.00 under s. 72(1) of the *Act* as it was successful in its application. The Tenants shall also pay this amount.

### Conclusion

I grant the Landlord an order of possession pursuant to s. 55 of the *Act*. The Tenants shall provide vacant possession of the rental unit to the Landlord within **two (2) days** of receiving the order.

I grant the Landlord a monetary order pursuant to ss. 67 and 72 of the *Act*. The Tenants shall pay **\$4,800.00** to the Landlord.

It is the Landlord's obligation to serve these orders on the Tenants. If the Tenants do not comply with the monetary order, it may be filed by the Landlord with the Small Claims Division of the Provincial Court and enforced as an order of that Court. If the Tenants do not comply with the order of possession, it may be filed by the Landlord with the Supreme 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 *Residential Tenancy Act*.

Dated: May 29, 2023

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Residential Tenancy Branch