



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## DECISION

Dispute Codes      OPR, OPC, MNRL-S, MNDCL-S, 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 8, 2023 (the “10-Day Notice”);
- an order of possession pursuant to s. 55 after issuing a One-Month Notice to End Tenancy signed on February 8, 2023 (the “One-Month Notice”);
- a monetary order pursuant to ss. 38 and 67 seeking compensation for unpaid rent by claiming against the deposit;
- a monetary order pursuant to ss. 67 and 38 compensating for loss or other money owed by claiming against the deposit; and
- return of the filing fee pursuant to s. 72.

J.G. appeared as the Landlord and was joined by his daughter, H.G., who assisted her father. M.M. appeared as the Landlord’s agent. The Tenant did not attend the hearing, nor did someone attend on their behalf.

The parties 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’s agent advises that the Notice of Dispute Resolution was served via registered mail sent on March 2, 2023 and the evidence served via registered mail sent on April 11, 2023. The Landlord provides me with copies of registered mail receipts as proof of service. I find that the Notice of Dispute Resolution and the Landlord’s evidence was served in accordance with s. 89 of the *Act*. Pursuant to s. 90 of the *Act*, I deem that

the Tenant received the Notice of Dispute Resolution on March 7, 2023 and the Landlord's evidence on April 16, 2023.

Pursuant to Rule 7.1 of the Rules of Procedure, the hearing began as scheduled in the Notice of Dispute Resolution. As the Tenant did not attend the hearing, it was conducted in their absence as permitted by Rule 7.3 of the Rules of Procedure and concluded at 11:12 AM without the Tenant's participation.

### Issues to be Decided

- 1) Is the Landlord entitled to an order of possession pursuant to either the 10-Day Notice or the One-Month Notice?
- 2) Is the Landlord entitled to a monetary order for unpaid rent?
- 3) Is the Landlord entitled to a monetary order for other compensation?
- 4) 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.

### *Background*

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

- The Tenant moved into the rental unit in July 2019.
- Rent of \$2,200.00 is due on the first of each month.
- The Tenant paid a security deposit of \$1,100.00 and a pet damage deposit of \$300.00 to the Landlord.

I am provided with a copy of the tenancy agreement by the Landlord.

### *Claim for an Order of Possession*

A landlord may request an order of possession pursuant to s. 55(2)(b) of the *Act* if they have served a notice to end tenancy on the tenant and the tenant has not disputed the notice within the time permitted to them under the *Act*.

The Landlord's agent advises that the 10-Day Notice and the One-Month Notice were both served on the Tenant via registered mail sent on February 8, 2023. The Landlord has provided a copy of the registered mail receipt as proof of service of the notices to end tenancy.

I find that the Landlord has served the Tenant with the 10-Day Notice and the One-Month Notice in accordance with s. 88 of the *Act*. Pursuant to s. 90 of the *Act*, I deem that the Tenant received both notices on February 13, 2023.

Looking first at the 10-Day Notice, s. 46(2) of the *Act* requires that 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).

Section 46(4) of the *Act* permits a tenant 5 days from receiving a notice to end tenancy for unpaid to either file an application disputing the notice or to pay the arrears. The Landlord's agent advises that the Tenant did not file to dispute the 10-Day Notice and did not pay the arrears listed within it within 5 days of receiving the notice.

I accept the Landlord's undisputed evidence that the arrears were unpaid, and that no application was filed to dispute the notice. Accordingly, I find that the time granted to the Tenant to dispute the notice has since passed and that the conclusive presumption under s. 46(5) of the *Act* has been triggered.

With respect to the 10-Day Notice, I grant the Landlord an order of possession pursuant to s. 55 of the *Act*. This order shall be effective two days after it is received by the Tenant.

As I have granted an order of possession pursuant to the 10-Day Notice, I need not consider whether one should also be granted with respect to the One-Month Notice.

#### *Unpaid Rent Claim*

The Landlord claims unpaid rent and compensation in lieu of rent for the overholding period after the 10-Day Notice's effective date.

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.

The Landlord provides me a statement of account with respect to the Tenant's rent payments as well as a screenshots of the e-transfer history. The records cover the range from January 2022 to February 2023. I note there are some discrepancies in the tabulation provided by the Landlord, such that overpayments for certain months are not accounted for. I have established a summary by reference to the e-transfer history and the cheque the Landlord says they received on December 5, 2022.

In total, the Landlord's evidence shows total rent payments of \$26,078.00 over the period. I note that rent over 14 months ought to have been paid in the amount of \$30,800.00 (\$2,200.00 x 14). The Landlord advises that the Tenant did not pay rent for March, April, and May 2023 and made a payment of \$1,000.00 on April 5, 2023 and \$2,000.00 on April 24, 2023.

I find that the Landlord has established that the Tenant failed to pay rent in accordance with the tenancy agreement and was in breach of it and s. 26 of the *Act*. I further find that the Landlord is also entitled to compensation in lieu of rent for the period in which the Tenant overheld on the rental unit after the effective date of the 10-Day Notice. In total, I accept the Landlord's undisputed evidence in the form of the documents and testimony provided, such that the total compensation is \$8,322.00 (((\$30,800.00 - \$26,078.00) + ((\$2,200.00 x 3) - \$3,000.00)). I find the Landlord could not have mitigated this as the Tenant continues to reside within the rental unit.

Pursuant to s. 72(2) of the *Act*, I direct that the Landlord retain the security deposit, pet damage deposit, and interest in partial satisfaction of these amounts. In total, the

deposits and interest totals \$1,410.10 (\$1,100.00 + \$300.00 + \$10.10).

I also grant the Landlord their filing fee of \$100.00 as they were successful in the application. I order the Tenant pay this pursuant to s. 72(1) of the *Act*.

In total, I grant the Landlord a monetary order of \$7,011.90 (\$8,322.00 + \$100.00 - \$1,410.10).

### Conclusion

I grant the Landlord an order of possession pursuant to s. 55 of the *Act* after issuing the 10-Day Notice. The Tenant 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 for compensation pursuant to ss. 67 and 72 of the *Act*. The Tenant shall pay **\$7,011.90** to the Landlord.

It is the Landlord's obligation to serve these orders on the Tenant. If the Tenant does 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 Tenant does 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 15, 2023

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Residential Tenancy Branch