



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      OPR, MNRL, FFL

### Introduction

The Landlord applied for dispute resolution (Application) and seeks the following:

- an Order of Possession on an undisputed 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) under section 55(2)(b) of the *Residential Tenancy Act* (the Act).
- to recover unpaid rent under sections 26 and 67 of the Act; and
- the cost of the filing fee under section 72 of the Act

The Tenant, the Landlord and the Landlord's Agent attended the hearing. The parties affirmed to tell the truth during the hearing. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

As both parties were present, service was confirmed at the hearing. The Landlord's Agent testified the Notice of Dispute Resolution Package (Materials) were served on the Tenant by attaching to the door of the rental unit on April 23, 2023. The Tenant confirmed receipt of the Landlord's Materials and raised no issues with service.

Section 89(2)(d) of the Act permits service of a landlord's application by attaching a copy to a door at a tenant's residence when the application relates to an Order of Possession only and not a Monetary Order. However, as the Tenant confirmed receipt of the Materials and raised no issues with service, I use my authority under section 71(2)(c) of the Act and order the Materials were sufficiently served in accordance with the Act and therefore I am able to consider the Landlord's request for both an Order of Possession and a Monetary Order.

### Issues to be Decided

1. Is the Landlord entitled to an Order of Possession?
2. Is the Landlord entitled to a Monetary Order for unpaid rent?
3. Is the Landlord entitled to recover the filing fee for the Application from the Tenant?

### Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this Decision.

The parties agreed on the following regarding the tenancy:

- The tenancy began on January 1, 2015.
- Rent is \$1,500.00 per month due on the first day of the month.
- A security deposit of \$750.00 was paid by the Tenant which the Landlord still holds.
- It is unknown if there is a written tenancy agreement.
- The Tenant still occupies the rental unit.

The Landlord's Agent testified as follows. The Tenant did not pay rent for two months in 2022. They were lenient and allowed the Tenant to work things out financially. However, the Tenant did not pay rent due March 1, 2023. The Notice was issued on March 10, 2023 to the Tenant in person. As of June 1, 2023 the Tenant owes \$9,000.00 in unpaid rent as the rent due April, May and June 2023 also went unpaid.

A copy of the Notice was entered into evidence by the Landlord. The Notice is dated March 7, 2023 and provides an effective date of March 16, 2023.

The Tenant testified as follows. They did not dispute the testimony of the Landlord's Agent and agreed that \$9,000.00 is owed in unpaid rent.

They have not been paying rent because another person, the (Occupant), resides in the rental unit and the Tenant "can not function" with them there. The Occupant is a friend of the Tenant's they let stay on the couch at the rental unit last year when the Occupant

had nowhere to else to go. The Occupant then refused to leave, and the relationship became strained. The Tenant was charged with assault and the police have been called to the property. The Occupant paid the Tenant \$500.00 in November and December 2022 but they did not pay the Landlord any money.

The Tenant acknowledged they allowed the Occupant to reside at the rental unit but as they could not get them to leave, or get the police to assist, they stopped paying rent.

The Landlord's Agent clarified that they had nothing to do with the Occupant, had never allowed them to stay, did not authorize sublets and had never received any funds from the Occupant.

### Analysis

The Notice and Application list the Tenant as the only tenant. As discussed during the hearing, the Occupant also occupies the rental unit. The Tenant testified the Occupant was allowed to stay at the rental unit for a short time, then refused to leave. I find the Occupant did not pay rent to the Landlord or form a tenancy agreement either express or implied with the Landlord. The Occupant paid the Tenant some fund last year, though the Tenant still maintained occupancy of the rental unit. Considering this, and the testimony of both parties, I find that the Tenant was not acting as an agent of the Landlord and so a sublease between the Occupant and Tenant could not have been formed.

Based on the above, I find that the Occupant is a roommate of the Tenant and they hold no rights or responsibilities under the Act. Therefore, I find the Occupant does not need to be listed on the Application or Notice, or added as a party to proceedings under rule 7.13 of the *Rules of Procedure*.

Section 26 of the Act requires tenants to pay rent on time unless they have a legal right to withhold some, or all, of the rent. Additionally, section 46(1) of the Act allows a landlord to end a tenancy if the tenant does not pay rent on time by issuing a 10 Day Notice to End Tenancy for Unpaid Rent.

I accept the Landlord's undisputed testimony that rent due March 1, 2023 was not paid by the Tenant. Therefore, I find on a balance of probabilities that the Notice was given for a valid reason, namely, the non-payment of rent. I also find that the Notice complies with the form and content requirements of section 52 of the Act.

The Notice was served on March 10, 2023 in person, therefore would have been deemed received on the same day in accordance with section 90 of the Act. Section 53 of the Act provides that incorrect effective dates automatically changed which is of relevance here as the effective date of the Notice should read March 20, 2023 instead of March 16, 2023.

I accept the Landlord's undisputed testimony that the outstanding rent was not paid in full within five days of the Tenant receiving the Notice. Had this been done it would have meant the Notice has no effect in accordance with section 46(4)(a) of the Act. Additionally, there is no record of the Tenant disputing the Notice. Therefore, under section 46(5) of the Act, the Tenant is presumed to have accepted the Notice.

Based on the above findings, the Landlord is granted an Order of Possession pursuant to section 55(2)(b) of the Act. I find that the Tenancy ended on March 20, 2023 in accordance with the Notice.

The Landlord is entitled to an order for unpaid rent under section 55(1.1) of the Act. Therefore, the Tenant is ordered to pay \$9,000.00 in unpaid rent to the Landlord.

As the Landlord has been successful in their Application, I order the Tenant to pay the Landlord the amount of \$100.00 in respect of the filing fee in accordance with section 72 of the Act.

Under section 38(4)(b) of the Act, the Landlord is ordered to retain the security deposit in partial satisfaction of the payment order.

### Conclusion

The Application is granted.

The Landlord is issued an Order of Possession. 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. 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.

The Landlord is issued a Monetary Order. A copy of the Monetary Order is attached to this Decision and must be served on the Tenant. It is the Landlord's obligation to serve the Monetary Order on the Tenant. The Monetary Order is enforceable in the Provincial Court of British Columbia (Small Claims Court). The Order is summarized below.

<b>Item</b>	<b>Amount</b>
Unpaid rent	\$9,000.00
Filing fee	\$100.00
Less: security deposit	(\$750.00)
<b>Total</b>	<b>\$8,350.00</b>

The Landlord is authorized to retain the security deposit.

This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: June 09, 2023

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Residential Tenancy Branch