



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPU-DR, OPUM-DR, CNR

### Introduction

In this dispute, the landlords sought an order of possession under section 55 of the *Residential Tenancy Act* (the “Act”) and compensation against the tenant for unpaid rent and utilities, under section 67 of the Act. The tenant, who also filed an application, had sought to cancel a 10 Day Notice to End Tenancy for Unpaid Rent (the “10 Day Notice”) pursuant to section 46 of the Act.

The tenant applied for dispute resolution on February 18, 2020 and the landlords filed an application for dispute resolution on March 4, 2020. A dispute resolution hearing was held, by way of telephone conference, on April 7, 2020. The landlords attended the hearing, were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; the tenant did not attend. Because the tenant did not attend the hearing, her application is dismissed without leave to reapply.

I have only considered evidence that was submitted in compliance with the *Rules of Procedure* and which was relevant to the issues of the landlords’ application.

### Issues

1. Are the landlords entitled to an order of possession?
2. Are the landlords entitled to compensation for unpaid rent and utilities?

### Background and Evidence

The landlords testified that the tenancy started on October 20, 2019 and that monthly rent was \$1,300.00, due on the first of the month. Along with the rent, the tenant was required to pay 40% of the utilities. There was a security deposit of \$650.00, which the

landlords currently retain in trust. A copy of the written tenancy agreement was submitted into evidence.

On February 2, 2020, the landlords served the 10 Day Notice in-person on the tenant for rent that was due on February 1, 2020. She also owed \$100.63 for unpaid utilities. The 10 Day Notice, a copy of which was submitted into evidence, notified the tenant that she had five days to pay the rent or file for dispute resolution. While the tenant filed for dispute resolution, she failed to serve a copy of the Notice of Dispute Resolution Proceeding on the landlords, as is required by the Act.

The landlords seek compensation for unpaid rent for February, March, and April 2020, in the amount of \$3,900.00. In addition, the landlords seek compensation for unpaid utilities for February, March, and April 2020 in the amount of \$398.19.

In support of their claim, the landlords also submitted copies of the following: a timeline of events, a completed Monetary Order Worksheet, a proof of service for the 10 Day Notice, a demand to the tenant to pay the utilities, and a proof of service for the demand to pay utilities.

Finally, the landlords testified that, to the best of their knowledge, the tenant vacated the rental unit on or about March 15, 2020. While most of the tenant's property was taken away when she moved out, the landlords commented that there is a small amount of personal property still remaining, and they inquired about their obligations in this regard. They also inquired as to whether the rental unit can be considered abandoned.

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

### **Order of Possession**

Section 55(1) of the Act states that

If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Section 52 of the Act is about the form and content of a notice to end tenancy, and it reads as follows:

- In order to be effective, a notice to end a tenancy must be in writing and must
- (a) be signed and dated by the landlord or tenant giving the notice,
  - (b) give the address of the rental unit,
  - (c) state the effective date of the notice,
  - (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy,
    - (d.1) for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied by a statement made in accordance with section 45.2 [*confirmation of eligibility*], and
  - (e) when given by a landlord, be in the approved form.

In this dispute, I have reviewed the 10 Day Notice and find that it complies with section 52 of the Act. Further, as the tenant failed to attend the hearing, I dismiss her application to cancel the 10 Day Notice. Having dismissed her application, I thus grant the landlords an order of possession pursuant to section 55(1) of the Act. This order is issued in conjunction with this decision. Further, I find that the tenancy ended on February 22, 2020, as stated in the 10 Day Notice.

### **Monetary Order**

Section 7 of the Act states that if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Further, section 67 of the Act states that if damage or loss results from a party not complying with the Act, the regulations or a tenancy agreement, an arbitrator may determine the amount of, and order that party to pay, compensation to the other party.

In this case, the landlords claim that the tenant did not pay rent and utilities as required by the tenancy agreement. Section 26 of the Act requires that a tenant must pay rent (which includes utilities when utilities are required to be paid under a tenancy

agreement) when it is due under the tenancy agreement, whether or not the landlord complies with the Act, regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or some of the rent. There is no evidence before me that the tenant had any right not to pay the rent and utilities.

Taking into consideration the undisputed oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlords have met the onus of proving their claim for compensation for unpaid rent and utilities in the total amount of \$4,298.19. They are thus awarded this amount.

Section 38(4)(b) of the Act permits a landlord to retain an amount from a security or pet damage deposit if “after the end of the tenancy, the director orders that the landlord may retain the amount.” As such, I order that the landlords to retain the tenant’s security deposit of \$650.00 in partial satisfaction of the above-noted award.

Pursuant to section 67 of the Act I grant the landlords a monetary order in the amount of \$3,648.19. A monetary order is issued to the landlords in conjunction with this decision.

### **Personal Property of the Tenant**

A landlords’ obligations in respect of a tenant’s personal property are outlined in Part 5 (“Abandonment of Personal Property”) of the [Residential Tenancy Regulation](#), B.C. Reg. 19/2020. For further information or direction the landlords may contact the Residential Tenancy Branch.

Having granted the landlords an order of possession, and finding that the tenancy ended on February 22, 2020, I make no findings of fact or law regarding whether the rental unit is abandoned. The landlords are, however, entitled to change the locks of the rental unit, as the rental unit is now within their possession.

### **Conclusion**

The tenant’s application is dismissed without leave to reapply.

I grant the landlords an order of possession, which must be served (if deemed necessary) on the tenant and is effective two days from the date of service. This order may be filed in, and enforced as an order of, the Supreme Court of British Columbia.

As I briefly explained during the hearing, however, most orders of possession (with the exception of those issued under sections 56 and 56.1 of the Act) are not enforceable during the current provincial state of emergency, as per Ministerial Order No. M089, [Residential Tenancy \(COVID-19\) Order](#), MO 73/2020. That said, the tenancy has ended, and the landlords have full right of possession of the rental unit.

I grant the landlords a monetary order in the amount of \$3,648.19, which must be served on the tenant. The order may be filed in, and enforced as an order of, the Provincial Court of British Columbia.

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

Dated: April 17, 2020

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Residential Tenancy Branch