



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNRL, FFL

### Introduction

This hearing dealt with the application filed by the Landlord under the Residential Tenancy Act, (the “Act”), for an order of possession to enforce 10-Day Notice for Unpaid Rent (the Notice) issued on March 4, 2020, a monetary order for unpaid rent, and to recover the cost of filing the application. The matter was set for a conference call.

The Landlord, the Property Manager (the “Landlord”) the Tenant and the Tenant’s mom (the “Tenant”) attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenant were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

### Issues to be Decided

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to monetary compensation for unpaid rent?
- Is the Landlord entitled to recover the filing fee for this application?

### Background and Evidence

The testimony of both parties confirmed that the tenancy began on May 1, 2018, as a one-year fix-term tenancy that rolled into a month-to-month tenancy at the end of the initial fixed-term. The parties agreed that the Tenant had lived at the rental property before this tenancy began, under a separate tenancy agreement handled by a different property management company. Rent in the amount of \$1,250.00 is to be paid by the first day of each month. The Landlord testified that they were not holding a security deposit for this tenancy, the Tenant testified that they had paid a security deposit to the previous property management company. The Landlord testified that the previous property management company had worked for them but that they had no knowledge of the security deposit.

The Landlord testified that the Notice to end tenancy was personally delivered to the Tenant on March 4, 2020, listing an outstanding rent amount of \$2,080.00 and listing an effective date of March 14, 2020. The Notice informed the Tenant of the right to dispute the Notice or pay the outstanding rent within five days after receiving it. The Notice also informed the Tenant that if an application to dispute the Notice or payment of the outstanding rent in full is not made within five days, the Tenant was presumed to have accepted the Notice and must move out of the rental unit on the date set out on page one of the Notice.

The Tenant testified that they had received the Notice and confirmed that they did not pay the outstanding rent or dispute the Notice within five days of receiving the Notice to End Tenancy.

The parties agreed that as of the date of this hearing, the Tenant had paid all of the rent that had been listed on the Notice as outstanding. The Landlord testified that the Tenant was currently outstanding \$400.00 for the April 2020 rent and \$1,250.00 for the May 2020, rent. The Tenant testified that they had been laid off due to the COVID-19 pandemic and that they had applied for and were waiting for a response to their government rent subsidy application.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I accept the agree upon testimony of these parties, that the Tenant received the Notice to End Tenancy on March 4, 2020. Section 46 of the *Act* requires that upon receipt of a Notice to End Tenancy for Non-payment of Rent, a tenant must, within five days, either pay the amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does not do either of these things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice under section 46(5).

***Landlord's notice: non-payment of rent***

**46** (1) *A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.*

(2) *A notice under this section must comply with section 52 [form and content of notice to end tenancy].*

(3) *A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.*

(4) *Within 5 days after receiving a notice under this section, the tenant may*  
*(a) pay the overdue rent, in which case the notice has no effect,*  
*or*  
*(b) dispute the notice by making an application for dispute resolution.*

(5) *If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant*

*(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and*

*(b) must vacate the rental unit to which the notice relates by that date.*

I also accept the agreed upon testimony that the Tenant did not pay the outstanding rent as indicated on the Notice and that they did not dispute the Notice within five days of receiving the Notice. Consequently, I find that the Tenant has not paid the full rent or disputed the Notice within the legislated timeline and was conclusively presumed to have accepted the tenancy ended on the effective date of the Notice.

Section 55 of the *Act* states that a landlord may request an order of possession if a notice to end the tenancy has been given by the landlord, and the tenant has not

disputed the notice by making an application for dispute resolution and the time for making that application has expired.

***Order of possession for the landlord***

**55** (1) *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.*

Therefore, I find that the Landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective **14 days** after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

I acknowledge that the Provincial Government declared a state of emergency on March 18, 2020. I note that the Emergency Order permits an arbitrator to issue an order of possession if the notice to end tenancy the order of possession is based upon was issued prior to March 30, 2020 (as per section 3(2) of the Emergency Order).

However, per section 4(3) of the Emergency Order, a landlord may not file an order of possession at the Supreme Court of BC unless it was granted pursuant to sections 56 (early end to tenancy) or 56.1 of the Act (tenancy frustrated). The order of possession granted above is not issued pursuant to either section 56 or 56.1 of the Act and can only be enforced through the Supreme Court of BC once the Emergency Order is lifted. The Landlord acknowledged understanding of these conditions during this hearing.

Additionally, I find that the Tenant has paid all of the rent as indicated on the Notice and is only outstanding for rent due during the current state of emergency. I accept the Tenant's testimony that they are in the application process for the government rent subsidy program and find it appropriate to wait until the current state of emergency is lifted before awarding a monetary claim for unpaid rent. Therefore, I decline to award the Landlord a monetary order for the outstanding rent for April and May 2020, and I dismiss that portion of their claim with leave to reapply.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. However, I decline to award the Landlord the recovery of the filing fee paid for this application.

### Conclusion

I grant an **Order of Possession** to the Landlord effective **fourteen days** after service of this Order on the Tenant. Should the Tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The Landlord application for a monetary order for outstanding rent is dismissed with leave to reapply.

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 14, 2020

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Residential Tenancy Branch