



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Cliffe Street Apartments Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNDL-S, MNRL-S, FFL

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent, pursuant to sections 46 and 55;
- a Monetary Order for unpaid rent, pursuant to sections 26 and 67;
- a Monetary Order for damage, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:42 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. The landlord's agent attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord's agent and I were the only ones who had called into this teleconference.

The landlord's agent testified that the landlord's application for dispute resolution was posted on the tenant's door on May 13, 2020. A witnessed proof of service document evidencing same was entered into evidence.

Section 89(1) of the *Act* states that an application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;

- (c)by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d)if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
- (e)as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

Section 89(2) of the Act states that an application by a landlord under section 55 [*order of possession for the landlord*], 56 [*application for order ending tenancy early*] or 56.1 [*order of possession: tenancy frustrated*] must be given to the tenant in one of the following ways:

- (a)by leaving a copy with the tenant;
- (b)by sending a copy by registered mail to the address at which the tenant resides;
- (c)by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant;
- (d)by attaching a copy to a door or other conspicuous place at the address at which the tenant resides;
- (e)as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

I find that the landlord's application for dispute resolution for:

- a Monetary Order for unpaid rent, pursuant to sections 26 and 67;
- a Monetary Order for damage, pursuant to section 67; and
- authorization to retain the tenants' security deposits, pursuant to section 38;

were not served in accordance with section 89(1) of the *Act*. I therefore dismiss the above claims with leave to reapply.

I find that the landlord's application for an Order of Possession for Unpaid Rent was served in accordance with section 89(2)(d) of the *Act*. I find that the tenant was deemed served with the landlord's application for dispute resolution on May 16, 2020, three days after its posting, pursuant to section 89(2)(d) and section 90 of the *Act*.

### Issues to be Decided

1. Is the landlord entitled to an Order of Possession for unpaid rent, pursuant to sections 46 and 55 of the *Act*?
2. Is the landlord entitled to recover the filing fee from the tenant, pursuant to section 72 of the *Act*?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the landlord's agent, not all details of the landlord's agent's submissions and arguments are reproduced here. The relevant and important aspects of the landlord's agent's claims and my findings are set out below.

The landlord's agent testified to the following undisputed facts. This tenancy began on January 1, 2020 and is currently ongoing. Monthly rent in the amount of \$1,650.00 plus a \$20.00 monthly parking fee is payable on the first day of each month. A security deposit of \$825.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The landlord's agent testified that on March 4, 2020 a 10 Day Notice to End Tenancy for Unpaid Rent with an effective date of March 18, 2020 (the "10 Day Notice") was posted on the tenant's door. A witnessed proof of service document stating same was entered into evidence. The 10 Day Notice states that the tenant failed to pay rent in the amount of \$2,525.00 that was due on March 1, 2020. The tenant did not make an application with the Residential Tenancy Branch to cancel the 10 Day Notice.

The landlord's agent testified that the tenant has not paid any rent since he was served with the 10 Day Notice. The landlord entered into evidence a rent ledger stating that no rent was paid between March 1, 2020 to May 1, 2020.

### Analysis

Section 88 of the *Act* states that a 10 Day Notice may be served on the tenant by posting. I find that the tenant was deemed served with the 10 Day Notice on March 7, 2020, three days after its posting, in accordance with sections 88 and 90 of the *Act*.

Based on the undisputed testimony of the landlord's agent and the rent ledger entered into evidence, I find that the tenant failed to pay the outstanding rent within five days of receiving the 10 Day Notice. The tenant has not made application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenant's failure to take either of these actions within five days led to the end of his tenancy on the effective date of the notice.

In this case, this required the tenant to vacate the premises by March 18, 2020, as that has not occurred, I find that the landlord is entitled to a 2-day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

Section 72(2) of the *Act* states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I find that the landlord is entitled to retain \$100.00 from the tenant's security deposit.

### Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service 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 is entitled to retain \$100.00 from the tenant's security deposit, pursuant to section 72 of the *Act*.

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: June 12, 2020

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Residential Tenancy Branch