



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Sincere Real Estate Services  
Ltd. and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPRM-DR, OPR-DR, FFL, MNRL

### Introduction

The landlord seeks an order of possession and a monetary order, both related to unpaid rent, pursuant to sections 55 and 67 of the *Residential Tenancy Act* ("Act"). In addition, the landlord seeks to recover the cost of the filing fee, pursuant to section 72 of the Act.

The landlord's agent attended the teleconference hearing at 9:30 AM on May 3, 2021. The tenant did not attend the hearing, which ended at 9:39 AM.

I am satisfied based on the documentary evidence provided by the landlord that the tenant was served with the Notice of Dispute Resolution Proceeding package in compliance with Act and the *Rules of Procedure*, under the Act.

### Issues

1. Is the landlord entitled to an order of possession?
2. Is the landlord entitled to a monetary order?
3. Is the landlord entitled to recover the cost of the filing fee?

### Background and Evidence

Relevant evidence, complying with the *Rules of Procedure*, was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the specific issues of this dispute, and to explain the decision, is reproduced below.

The tenancy began on July 31, 2019. Monthly rent is \$1,550.00. Rent is due on the first day of the month. The tenant paid a security deposit of \$775.00. A copy of a written tenancy agreement is in evidence.

On January 7, 2021, the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"). The Notice, a copy of which is in evidence, indicated that the tenant failed to pay rent of \$1,550.00 that was due on January 1, 2021. The Notice was served by being left in a mailbox or a mail slot at the rental unit. The landlord's agent testified that as of May 3, 2021, the tenant owes rent in the amount of \$5,600.00. An updated Monetary Order Worksheet was submitted in evidence.

### Analysis

Section 26 of the Act states that

A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Section 46(1) of the Act states that

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.

Section 46(4) of the Act requires a tenant who has received a notice under section 46(1) to either, within 5 after receiving the notice, (a) pay the overdue rent, or (b) dispute the notice by making an application for dispute resolution.

Sections 46(4) and (5) state the following:

- (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.

In this dispute, the Notice was left in the mailbox on January 7, 2021, and as such is deemed to have been received on the third day after it was left (see section 90(d) of the Act). Thus, the tenant is deemed to have received the Notice on January 10, 2021.

The tenant did not pay rent or make an application for dispute resolution within 5 days after receiving the Notice. As such, as per section 46(5) of the Act, I find the tenant is conclusively presumed to have accepted the tenancy ended on January 20, 2021 (corrected as per section 53(2) of the Act, based off of the deemed received date).

Section 55(2)(b) of the Act states that

A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution: [. . .]

- (b) a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired

Section 55(4) of the Act permits me to also grant a monetary order if the landlord's application is in relation to the non-payment of rent.

Taking into consideration all 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 landlord has met the onus of proving their application for an order of possession for unpaid rent, and for a monetary award of \$5,600.00.

In addition, I award the landlord an additional \$100.00 pursuant to section 72 of the Act, to cover the cost of the application filing fee, for a total award of \$5,700.00

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 landlord may retain the tenant's security deposit of \$775.00 in partial satisfaction of the above-noted award.

Thus, the monetary order is in the amount of \$4,925.00.

Conclusion

I HEREBY:

1. grant the landlord an order of possession, which must be served on the tenant and is effective two (2) days from the date of service. If necessary, this order may be filed in, and enforced as an order of, the Supreme Court of British Columbia;
2. grant the landlord a monetary order in the amount of \$4,925.00, which must be served on the tenant. If the tenant fails to pay the landlord the amount owed, the landlord may file and enforce the order in the Provincial Court of British Columbia; and,
3. order that the landlord may retain the tenant's \$775.00 security deposit.

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: May 3, 2021

---

Residential Tenancy Branch