



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, OLC, FFT  
OPRM-DR, FFL

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”). The matter was set for a conference call.

The Tenant’s Application for Dispute Resolution was made on March 6, 2021. The Tenant applied to cancel a 10-Day Notice to End Tenancy for Unpaid Rent (the “Notice”) issued on March 2, 2021.

The Landlord’s Application for Dispute Resolution was made on March 18, 2021. The Landlord applied for an order of possession to enforce a 10-Day Notice for Unpaid Rent and Utilities (the Notice) issued on March 2, 2021, for a monetary order for unpaid rent and utilities, and to recover the filing fee paid for this application.

The Landlord and the Landlord’s Advocate (the “Landlord”) attended the conference call hearing; however, the Tenant did not. As the Tenant is also an applicant in this hearing, I find that the Tenant had been duly notified of the Notice of Hearing in accordance with the Act. The Landlord was affirmed to be truthful in their testimony and was provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing.

### Issues to be Decided

- Should the Notice to End Tenancy be cancelled?
- If not, is the Landlord entitled to an order of possession pursuant to section 55 of the Act?
- Is the Landlord entitled to a monetary order for unpaid rent and utilities?
- Is the Landlord entitled to the return of their filing fee?

### Background and Evidence

The tenancy agreement recorded that the tenancy began on November 15, 2020, as a one-year fixed term tenancy. Rent in the amount of \$1,750.00 is to be paid by the first day of each month, and that the Tenant paid the Landlord a \$875.00 security deposit. The Landlord submitted a copy of the tenancy agreement into documentary evidence.

The Landlord testified that they served the Notice to the Tenant on March 2, 2021, by posting the Notice to the front door of the rental unit. The Notice recorded an effective date of March 13, 2021, and an outstanding rent amount of \$1,750.00, and an outstanding utility amount of \$70.76. The Landlord submitted a copy of the Notice into documentary evidence.

The Landlord testified that the Tenant has made a partial payment to the rent for February 2021, of \$1,720.00, but that the full balance, as indicated on the Notice, had not been paid. The Landlord also testified that the Tenant had not paid the rent for March, April, May, or June 2021. The Landlord testified that as of the date of this hearing, the Tenant is past due \$7,030.00 in rent, consisting of \$30.00 for February, \$1,750.00 for March, \$1,750.00 for April, \$1,750.00 for May, and \$1,750.00 for June 2021.

The Landlord testified that the Tenant was also outstanding in their utility payments for this tenancy. The Landlord testified that they had not served the Tenant with a written demand for these outstanding utilities as of the date of these proceedings.

The Landlord is requesting that the Notice to end tenancy be enforced, that an order of possession is issued, as well as a monetary order for the unpaid rent and utilities.

### Analysis

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

I accept the testimony of the Landlord that they served the Tenant with the Notice to end the tenancy on March 2, 2021, by posting the Notice to the front door of the rental unit. I find that the Tenant was deemed to have received the Notice three days after it was posted to the door, pursuant to section 90 of the *Act*, on March 5, 2021, and that the Tenant did apply to dispute the Notice.

The Tenant's application to dispute the Notice was set for hearing by a telephone conference call at 1:30 p.m. on this date. The line remained open while the phone system was monitored, and the only participant who called into the hearing was the Landlord.

Rules 7.1, 7.3 and 7.4 of the Rules of Procedure provide as follows:

**7.1 Commencement of the dispute resolution hearing**

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

**7.3 Consequences of not attending the hearing**

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

**7.4 Evidence must be presented**

Evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

Therefore, as the Tenant did not attend the hearing, I dismiss the Tenant's application without leave to reapply.

Section 55(1) of the Act states:

***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.*

I have reviewed the Notice to end the tenancy, and I find the Notice complies with section 52 of the Act.

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

as an order of that Court. The Tenant is cautioned that the costs of such enforcement are recoverable from the tenant.

Additionally, I accept the testimony of the Landlord that the Tenant has only paid a portion of the outstanding rent as indicated on the Notice, and that they have also not paid any rent for March, April, May and June 2021. I find that the Landlord has established an entitlement to a monetary award for the outstanding rent in the amount of \$7,030.00. I grant permission to the Landlord to retain the Tenant's security deposit in partial satisfaction of this award.

As for the Landlord's claim for unpaid utilities, I accept the Landlord's testimony that as of that date of these proceedings, they have not served the Tenant with a written demand requesting payment of the utilities they have included in their application.

Section 46 of the Act states the following regarding utility charges:

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

**46 (6) If**

*(a) a tenancy agreement requires the tenant to pay utility charges to the landlord, and*

*(b) the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them, the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.*

Pursuant to section 46 (6b) of the Act, as the Landlord has not served the Tenant with a written demand to pay these utility bills, I decline to award the Landlord the requested amount. This portion of the Landlord's application is dismissed with leave to reapply, if the Landlord serves the Tenant with the required written demand for these bills, and they remain unpaid for 30 days after service of the written demand.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has been successful in their application, I find the Landlord is entitled to recover the \$100.00 filing fee for this application.

I grant the Landlord a **Monetary Order** in the amount of **\$6,255.00**; consisting of \$7,030.00 in outstanding rent for the months of February, March, April, May and June

2021, \$100.00 in the recovery of the Landlord's filing fee, less the \$875.00 the Landlord is holding in a security deposit for this tenancy.

### Conclusion

The Tenant's application is dismissed without leave to reapply.

I grant an **Order of Possession** to the Landlord effective not later than **2 days** after service upon the Tenant. The Tenant must be served with this Order. 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.

I grant the Landlord a **Monetary Order** in the amount of **\$6,255.00**. The Landlord is provided with this Order in the above terms, and the Tenant must be served with this Order as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The Landlord's application for a monetary order for unpaid utilities 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: June 14, 2021

---

Residential Tenancy Branch